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November 21, 2018

Via Electronic Filing

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

RE: Late-Filed Exhibit No. 94 for Consolidated Docket Nos. 2017-207-E, 2017-305-E, 2017-370-E

Dear Ms. Boyd:

Please find enclosed for filing on behalf of the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy, late-filed Exhibit No. 94. This exhibit was requested by the Public Service Commission of South Carolina during the questioning of Ronald J. Binz. The Commission asked for a "prototypical" securitization bill after Mr. Binz described his work on a Colorado bill that is modeled on the securitization laws of numerous other states. The attached exhibit includes a scaled-down and more generic version of the "model" Colorado legislation Mr. Binz referenced in his testimony, as well as the introduced 2017 Colorado legislation and the 2015 Florida legislation passed to securitize the debt of the early-retired Crystal River nuclear plant.

We are serving a copy of this late-filed exhibit on the parties of record pursuant to the electronic service agreement in the consolidated dockets.

Please contact me if you have any questions concerning this filing.

Sincerely,



William Cleveland

"Model" Securitization Legislation

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PART I – Ratepayer-Backed Bonds and Public Service Commission Regulation

1. Legislative declaration.

There are alternative financing mechanisms used by twenty-one other states since 1997 that will result in lower costs to electric utility customers, and the use of these mechanisms can ensure that the costs of retiring electric utility facilities can be financed in a way that reduces the total amount of costs being included in customer rates.

The primary purpose of this act is to authorize the issuance of low-cost securitized ratepayer-backed bonds, the proceeds of which will be used to lower rates paid by electric utility customers by reducing financing costs of certain retired or abandoned utility facilities and provide funding for appropriate replacement supply-side and demand-side resources.

To implement this financing mechanism, it is necessary to authorize the Public Service Commission to review and approve one or more financing orders that advance these goals if the Commission deems such approval to be appropriate and in the interest of ratepayers.

Customer costs of alternative financing mechanisms can be minimized by achieving the highest possible credit rating from independent credit rating agencies, which requires special procedures and conditions including:

- (i) The use of limited purpose bankruptcy-remote financing entities to issue ratepayer-backed bonds;
- (ii) The creation of a properly structured and implemented adjustment mechanism to adjust the charge dedicated to the repayment of the bonds to enable consistent, accurate, and timely remittances to the financing entities for the benefit of bondholders; and
- (iii) A state pledge that constitutes an enforceable promise to guarantee the payment of principal and interest on securitized investor-owned electric utility ratepayer-backed bonds as those amounts become legally due and owing.

It is therefore in the interest of the state and its citizens to encourage and facilitate the use of securitized ratepayer-backed bonds as a method for enabling electric utilities to lower the cost of financing the retirement or abandonment of electric facilities under certain conditions and to empower the Public Service Commission to review such securitization mechanisms to determine whether they are consistent with the public interest and worthy of approval.

2. Definitions.

- a. “RBB” means Ratepayer Backed Bond; “RBBs” means Ratepayer-Backed Bonds.
- b. “Commission” means the Public Service Commission of [State].
- c. “Financing Order” means an order of the Commission that authorizes the issuance of Ratepayer-Backed Bonds; the imposition, collection, and periodic adjustments of the RBB Charge; and the creation of RBB Property.
- d. “Ratepayer-Backed Bonds” means low-cost corporate securities, such as senior secured bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a scheduled maturity of no longer than thirty years and a final legal maturity date that is not later than thirty-two years from the issue date, that are rated AA or Aa2 or better by a major independent credit rating agency at the time of issuance, and that are issued by an electric utility or an assignee pursuant to a financing order, the proceeds of which are used to recover, finance, or refinance Commission-approved RBB costs and financing costs, and that are secured by or payable from RBB property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium refer to comparable amounts under those certificates.
- e. “Ancillary agreement” means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with Ratepayer-Backed Bonds.
- f. “Assignee” means any entity, including, but not limited to, a corporation, limited liability company, partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to RBB property. The term also includes any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to RBB property.
- g. “Financing costs” means –
 - i. Interest and acquisition, defeasance, or redemption premiums payable on RBBs;
 - ii. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to RBBs;

- iii. Any other cost related to issuing, supporting, repaying, refunding, and servicing RBBs, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of RBBs or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;
 - iv. Any taxes or license fees imposed on the revenues generated from the collection of the RBB charge.
- h. “Financing party” means holders of RBBs and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of holders of RBBs.
- i. “RBB Charges” means the amounts authorized by the Commission to repay, finance, or refinance RBB costs and financing costs. If determined appropriate by the Commission and provided for in a financing order, such amounts are to be imposed on and be a part of all customer bills and be collected by an electric utility or its successors or assignees, or a collection agent, in full, through a nonbypassable charge that is separate and apart from the electric utility’s base rates, which charge shall be paid by all existing or future customers receiving transmission or distribution service from the electric utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state.
- j. “RBB Costs” means:
- As approved by the Commission pursuant to this article, the pre-tax costs that an electric utility has incurred or expects to incur which are caused by, associated with, or remain as a result of the early retirement or abandonment of an electric utility asset that is located in this state where such early retirement or abandonment is deemed to be reasonable and prudent by the Commission through a final order approving a settlement or other final order issued by the Commission.
- i. Pre-tax costs that an electric utility has previously incurred related to the Commission-approved closure of an electric facility located in this state and occurring before the effective date of this section.
 - ii. As used in this section, “pre-tax costs,” where determined appropriate by the Commission, include, but are not limited to, the capitalized cost of the retired or abandoned utility asset, other applicable capital and operating

costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and previously stipulated write-downs or write-offs, if any, and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

- k. “RBB Property” means:
 - i. All rights and interests of an electric utility or successor or assignee of the electric utility under a financing order, including the right to impose, bill, collect, and receive RBB charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order; or
 - ii. All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subparagraph i., regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.
3. Financing order.
- a. An electric utility may apply to Commission for a financing order under this section and seek approval of the Commission to create RBB property; issue RBBs; and impose and collect RBB charges.
 - b. In its application for a financing order, the utility shall:
 - i. Specify the RBB property that is, or shall be, created in favor of an electric utility or its successors or assignees and that shall be used to pay or secure RBBs and all financing costs;
 - ii. Seek authority to issue RBBs to finance RBB property as approved by the Commission;
 - iii. Estimate the financing costs related to the proposed RBBs;
 - iv. Specify the term over which the proposed RBBs would be repaid;
 - v. Estimate the RBB charges necessary to recover the RBB costs and related financing costs over the proposed period for recovery of such costs;
 - vi. Propose a methodology for allocating the revenue requirement for the RBB charge among customer classes;
 - vii. Describe the nonbypassable RBB charge required to be paid by customers within the electric utility’s service area for recovery of RBB costs;
 - viii. Estimate the net present value of electric utility customer savings expected to result if the financing order is issued as determined by a net present value comparison between the costs to customers that are expected to result from the financing of the undepreciated balances of the electric facilities with RBBs and the costs that would result from the application of

- traditional electric utility financing mechanisms to the same undepreciated balances;
- ix. Provide one or more alternative financing scenarios in addition to the preferred scenario contained in the application;
 - x. Include direct testimony supporting the petition; and
 - xi. Include any additional information required by the Commission.
- c. The Commission shall take final action to approve, deny or modify an application for a financing order within 210 days of the date on which the application is deemed complete by the Commission.
- d. Following notice and hearing on an application for a financing order as required by the Commission's rules, the Commission may issue a financing order only if it finds that:
- i. The RBB costs described in the application related to the retirement or abandonment of the electric utility assets are reasonable;
 - ii. The proposed issuance of RBB bonds and the imposition and collection of RBB charges are just and reasonable and are consistent with the public interest;
 - iii. Financing the RBB costs described in the application will provide substantial, tangible, and quantifiable benefits to customers that are greater than the benefits that would have been achieved absent the issuance of RBBs; and
 - iv. The structuring, marketing, and pricing of RBBs will achieve the maximum net present value of customer savings, compared to traditional financing options, consistent with market conditions at the time of sale of the bonds and the terms of the financing order.
- e. The financing order must:
- i. Specify the amount of RBB costs to be financed using RBBs, taking into consideration, to the extent the Commission deems appropriate, any other methods used to recover these costs. The Commission shall describe and estimate the amount of financing costs which may be recovered through RBB charges and specify the period over which such costs may be recovered;
 - ii. Authorize the utility to issue RBBs to finance RBB costs and the associated financing costs;
 - iii. Describe the financing costs that may be included in RBB costs and collected in RBB charges;
 - iv. Describe the customer billing mechanism to collect RBB charges and find that the mechanism produces just and reasonable rates;

- v. Require the utility applicant to lower its rates simultaneously with the inception of RBB charges in an amount equal to the revenue requirement associated with the RBB property being financed by the bond issuance;
 - vi. Provide detailed findings of fact addressing cost-effectiveness and associated rate impacts upon retail customers and each retail customer class;
 - vii. Require that the imposition and collection of RBB charges authorized under a financing order be nonbypassable and paid by all existing and future customers receiving transmission or distribution service from the electric utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state;
 - viii. Include a formula-based true-up mechanism for making expeditious periodic adjustments in the RBB charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or under collection of the charges or to otherwise ensure the timely payment of RBBs and financing costs and other required amounts and charges payable in connection with the RBBs; and
 - ix. Specify a future ratemaking process to reconcile any difference between the projected pretax costs included in the amount financed by the RBBs and the final actual pretax costs incurred by the utility in retiring the electric facility. The reconciliation may affect the utility's base rates, or any rider adopted pursuant to this section but shall not affect the amount of the bonds or the associated RBB charges paid by customers.
 - f. In connection with the retirement or abandonment of a nuclear power generating unit or a coal-fired generating unit, the Commission may require an electric utility to file an application for approval of a financing order under this section and all requirements of this section shall apply to such application.
4. Effect of financing order.
- a. The financing order issued pursuant to this article must remain in force until RBBs repaid in full.
 - b. A financing order remains in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of applicant utility.
 - c. A financing order is irrevocable, and the Commission may not reduce, impair, postpone, or terminate RBB charges approved in a financing order.

- d. The Commission may authorize the refinancing of the RBBs if all of the original findings and public interest conditions are fulfilled by the terms of the refinancing.
 - e. A financing order issued to an electric utility may provide that creation of the electric utility's RBB property is conditioned upon, and simultaneous with, the sale or other transfer of RBB property to an assignee and the pledge of the RBB property to secure RBBs.
5. Effect on Commission jurisdiction.
- a. Except as otherwise provided in subsection (b) of this section, if the Commission issues a financing order to an electric utility, the Commission shall not, in exercising its powers and carrying out its duties pursuant to this article:
 - i. Consider the RBBs issued pursuant to the financing order to be debt of the electric utility other than for income tax purposes unless it is necessary to consider the RBBs to be such debt to achieve consistency with prevailing utility debt rating methodologies;
 - ii. Consider the RBB charges paid under the financing order to be revenue of the electric utility;
 - iii. Consider the RBB costs or financing costs specified in the financing order to be the regulated costs or assets of the electric utility; or
 - iv. Determine any prudent action taken by an electric utility that is consistent with the financing order to be unjust or unreasonable.
 - b. Nothing in subsection (1) of this section affects the authority of the Commission to apply or modify any billing mechanism designed to recover RBB charges.
6. Customer protection.
- a. The General Assembly hereby finds and declares that –
 - i. The use of RBB bond financing will bring substantial benefits to the state's electric utility customers; and
 - ii. Because the Commission's approval of a financing order is irrevocable, typically addresses very large amounts of financing undertaken pursuant to this article, and is not reviewable by future Commissions, in addition to its other powers and duties, the Commission has the duty to perform and authority required to perform comprehensive due diligence in its evaluation of an application for a financing order and has the duty and authority to oversee the process used to structure, market, and price RBBs.
 - b. In addition to any other authority of the Commission:

- i. The Commission may attach such conditions to the approval of a financing order as the Commission deems appropriate to maximize the financial benefits or minimize the financial risks of the transaction to customers;
 - ii. The Commission may specify details of the process used to structure, market, and price RBBs, including the selection of the underwriter or underwriters;
 - iii. The Commission shall review and determine the reasonableness of all proposed up-front and ongoing financing costs; and
 - iv. The Commission shall ensure that the structuring, marketing, and pricing of RBBs maximizes net present value customer savings, consistent with market conditions and the terms of the financing order.
- c. Within one hundred twenty days after the issuance of RBBs, the applicant electric utility shall file with the Commission information regarding the actual up-front and ongoing financing costs of the RBBs. The Commission shall review the prudence of the electric utility's action to determine whether the costs resulted in the lowest overall costs that were reasonably consistent with both market conditions at the time of the issuance and the terms of the financing order. If the Commission determines that the electric utility's actions were not prudent or were inconsistent with the financing order, the Commission may apply any remedies that are available to it under this article; except that the Commission shall not apply any remedy that has the effect, directly or indirectly, of impairing the security for the RBBs.
- d. In performing its responsibilities under this article, the Commission may engage outside consultants and counsel experienced in securitized investor-owned electric utility ratepayer-backed bond financing similar to RBBs, and the expenses associated with the engagement shall be included as financing costs and included in the RBB charge, are not an obligation of the state, and are assigned solely to the transaction. In addition, expenses incurred by the Commission to hire and compensate additional temporary staff needed to perform its responsibilities under this article shall be included as financing costs and included in the RBB charge.
- e. If a utility's application for a financing order is denied or withdrawn or for any reason no RBBs are issued, the Commission's costs of retaining expert consultants, as authorized by subsection (d) of this section, shall be paid by the applicant utility and shall be considered by the Commission as a prudent deferred expense for recovery in the utility's future rates.

7. Electric utilities - duties.

- a. The electric bills of an electric utility that has obtained a financing order and caused RBBs to be issued:
 - i. Shall explicitly reflect that a portion of the charges on the bill represents RBB charges approved in a financing order issued to the electric utility and, if the RBB property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to RBB charges and that the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee;
 - ii. Shall include the RBB charge on each customer's bill as a separate line item titled "ratepayer-backed bonds" and may include both the rate and the amount of the charge on each bill. The failure of an electric utility to comply with this subsection does not invalidate, impair, or affect any financing order, RBB property, RBB charge, or RBBs, but does subject the electric utility to penalties under applicable Commission rules; and
 - iii. Shall explain to customers in an annual filing with the Commission the rate impact that financing the retirement of electric generating facilities has had on customer rates.
- b. An electric utility that has obtained a financing order and caused RBBs to be issued shall demonstrate in an annual filing with the Commission that RBB revenues are applied solely to the repayment of RBBs and other approved financing costs.

8. Use of RBB bond proceeds by an electric utility.

- a. Subject to Commission approval under this Section and any other applicable requirements, an electric utility may expend or invest RBB proceeds, other than proceeds required by a financing order to be used to assist the Commission as provided in section 6(d), as follows:
 - i. To purchase power from renewable energy facilities;
 - ii. To build and own renewable energy generation facilities;
 - iii. To build, own, or purchase electricity storage to the extent that such facilities are either required by law or Commission rule or are found by the Commission to be necessary to maximize the amount of renewable energy resources that can be added to the electric utility's system;
 - iv. To implement energy efficiency and other demand-side management programs; or
 - v. To invest in network modernization to the extent that the modernization is necessary to increase the amount of renewable energy resources and demand-side management resources that can be added to the electric utility's system;

- b. An electric utility may use up to ten percent of the net RBB proceeds to own non-renewable energy generating facilities or purchase power from non-renewable energy resources to the extent that such non-renewable energy is found by the Commission to be necessary to maximize the amount of renewable energy that can reliably be added to the utility's system.
- c. An electric utility may use up to one-third of the net RBB proceeds to retire or refinance high cost debt.

PART II – Detailed Investor Provisions

9. Legislative declaration.

It is in the interest of the state and its citizens that Commission-approved ratepayer-backed bonds, issued to finance retired or abandoned utility facilities, receive the highest possible bond ratings and carry the lowest possible interest rates, subject to market conditions. In furtherance of that interest, the General Assembly hereby acts to clarify the details of the security interest in the property securing those bonds, the sale of that property, and pledges the state's support of the uninterrupted and timely payment of all charges described in the bonds until those obligations are paid in full.

10. RBBs - legal investments - not public debt - pledge of state.

- a. Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any money within their control in RBBs. Public entities, as defined in Section XXX of ([State] law) may invest public funds in RBBs only if the RBBs satisfy the investment requirements established in Section XXX of ([State] law).
- b. RBBs issued as authorized by a financing order are not debt of or a pledge of the faith and credit or taxing power of the state, any agency of the state, or any county, municipality, or other political subdivision of the state. Holders of RBBs have no right to have taxes levied by the state or by any county, municipality, or other political subdivision of the state for the payment of the principal or interest on RBBs. The issuance of RBBs does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of principal or interest on the RBBs.
- c. The state pledges to and agrees with holders of RBBs, any assignee, and any financing parties that the state will not:
 - i. Take or permit any action that impairs the value of RBB property; or
 - ii. Reduce, alter, or impair RBB charges that are imposed, collected, and remitted for the benefit of holders of RBBs, any assignee, and any financing parties, until any principal, interest, and redemption premium payable on RBBs, all financing costs, and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full.
- d. A person who issues RBBs may include the pledge specified in subsection (c) of this section in the RBBs, ancillary agreements, and documentation related to the issuance and marketing of the RBBs.

11. Assignee or financing party not automatically subject to Commission regulation.

An assignee or financing party is not an electric utility nor is deemed to be providing electric service by virtue of engaging in the transactions described in this section.

12. Security interests in RBB property.

- a. The creation, perfection, and enforcement of any security interest in RBB property to secure the repayment of the principal of and interest on RBBs, amounts payable under any ancillary agreement, and other financing costs are governed by this subsection and not by the “uniform commercial code”, Section XXX of ([State] law). All of the following apply:
 - i. The description or indication of RBB property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this article and the financing order creating the RBB property.
 - ii. A security interest in RBB property is created, valid, and binding as soon as all of the following events have occurred:
 1. The financing order that describes the RBB property is issued;
 2. A security agreement is executed and delivered; and
 3. Value is received for the RBBs.
- b. Once a security interest in RBB property is created under subsection (a) of this section, the security interest attaches without any physical delivery of collateral or any other act. The lien of the security interest is valid, binding, and perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien, upon the filing of a financing statement with the secretary of state. The secretary of state shall maintain a financing statement filed pursuant to this subsection in the same way the secretary maintains and in the same record-keeping system in which the secretary maintains financing statements filed pursuant to article XXX. The filing of any financing statement pursuant to this subsection is governed by Section XXX of ([State] law) regarding the filing of financing statements.
- c. A security interest in RBB property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, which may subsequently attach to the RBB property unless the holder of the security interest has agreed in writing otherwise.
- d. The priority of a security interest in RBB property is not affected by the commingling of RBB property or RBB revenue with other money. An assignee, bondholder, or financing party has a perfected security interest in the amount of

all RBB property or RBB revenue that is pledged for the payment of RBBs even if the RBB property or RBB revenue is deposited in a cash or deposit account of the electric utility in which the RBB revenue is commingled with other money, and any other security interest that applies to the other money does not apply to the RBB revenue.

- e. Neither a subsequent order of the Commission amending a financing order as authorized by section 3 nor application of an adjustment mechanism as authorized by section 3(e)(viii) affects the validity, perfection, or priority of a security interest in or transfer of RBB property.

13. Sales of RBB property.

- a. A sale, assignment, or transfer of RBB property is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to, and under the RBB property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in RBB property may be created only when all of the following have occurred:
 - i. The financing order creating and describing the RBB property has become effective;
 - ii. The documents evidencing the transfer of the RBB property have been executed and delivered to the assignee; and
 - iii. Value is received.
- b. Upon the filing of a financing statement with the secretary of state, a transfer of an interest in RBB property is perfected against all third persons, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the RBB property previously perfected in accordance with this subsection (a). The secretary of state shall maintain a financing statement filed pursuant to this subsection (b) in the same way the secretary maintains and in the same record-keeping system in which the secretary maintains financing statements filed pursuant to article XXX. The filing of any financing statement pursuant to this subsection (b) is governed by Section XXX of ([State] law) regarding the filing of financing statements.
- c. The characterization of a sale, assignment, or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the assignee is not affected or impaired by the existence or occurrence of any of the following:
 - i. Commingling of RBB revenue with other money;

- ii. The retention by the seller of:
 - 1. A partial or residual interest, including an equity interest, in the RBB property, whether direct or indirect, or whether subordinate or otherwise; or
 - 2. The right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of RBB revenue;
 - 3. Any recourse that the purchaser may have against the seller;
 - 4. Any indemnification rights, obligations, or repurchase rights made or provided by the seller;
 - 5. An obligation of the seller to collect RBB revenues on behalf of an assignee;
 - 6. The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;
 - 7. Any subsequent financing order amending a financing order as authorized by section 3; or
 - 8. Any application of an adjustment mechanism as authorized by section 3(e)(viii)

PART III – Other Provisions

14. Judicial review of financing orders.

A financing order is a final order of the Commission. Notwithstanding other provisions of law, a party aggrieved by the issuance of a financing Order may petition for suspension and review of the financing Order only in the [appropriate court] for [State]. In the case of any petition for suspension and review, the Court shall proceed to hear and determine the action as expeditiously as practicable and shall give the action precedence over other matters not accorded similar precedence by law.

15. Effect of other laws and judicial decisions.

- a. If any provision of this article conflicts with any other law regarding the attachment, assignment, perfection, effect of perfection, or priority of any security interest in or transfer of RBB property, the provisions of this article govern to the extent of the conflict.
- b. Effective on the date that RBBs are first issued, if any provision of this article is held to be invalid or is invalidated, superseded, replaced, repealed, or expires, that occurrence does not affect any action allowed under this article that was lawfully taken by the Commission, an electric utility, an assignee, a collection agent, a financing party, a bondholder, or a party to an ancillary agreement before the occurrence, and any such action remains in full force and effect.

16. Choice of law.

The laws of the state govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in any RBB property, RBB charge, or financing order.

17. Effective date.

Effective on signature.

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 17-0571.03 Jason Gelender x4330

HOUSE BILL 17-1339

HOUSE SPONSORSHIP

Hansen and Esgar,

SENATE SPONSORSHIP

Kerr and Jones,

House Committees
Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AUTHORIZATION FOR THE ISSUANCE OF LOW-COST**
102 **RATEPAYER-BACKED BONDS, AND CREATION OF THE COLORADO**
103 **ENERGY IMPACT ASSISTANCE AUTHORITY TO MITIGATE THE**
104 **IMPACTS OF POWER PLANT RETIREMENTS ON COLORADO**
105 **WORKERS AND COMMUNITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill, known as the "Colorado Energy Impact Assistance Act", authorizes any investor-owned electric utility (utility) to apply to the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 1, 2017

HOUSE
Amended 2nd Reading
April 27, 2017

public utilities commission (PUC) for a financing order that will authorize the utility to issue low-cost Colorado energy impact assistance bonds (bonds) to lower the cost to electric utility customers (ratepayers) when the retirement of a power plant occurs. A portion of bond proceeds will provide transition assistance for Colorado workers and communities directly affected by the retirement of the facilities (transition assistance). To repay the bonds at the lowest cost to ratepayers, the PUC is authorized to review and approve a financing order and authorize a special energy impact assistance charge that is separate and apart from the utility's base rates on all ratepayer bills. The establishment and ongoing adjustment of the separate charge will allow bonds to achieve the highest possible credit rating, at least AA/Aa2, from the national independent credit rating agencies and will therefore allow bonds to be issued at the lowest possible interest rate and lowest subsequent cost to ratepayers.

Before issuing a financing order, the PUC must hold a public hearing, receive testimony from affected groups, and make specified determinations concerning the necessity, prudence, justness, reasonableness, and quantifiable benefits to utility ratepayers of issuing the financing order. After the public hearing process, if a financing order is approved by the PUC, it must include specific information and instructions for the utility to which it applies relating to the amount of bonds to be issued and the imposition of the energy impact assistance charge and must require the utility to pay a specified percentage of the net present value of the savings to a newly created Colorado energy impact assistance authority (authority) for the payment of transition assistance by the authority and the authority's reasonable and necessary administrative and operating costs. As an alternative to the financing order and bond issuance process, upon the closure of an electric generating facility, a Colorado electric utility may transfer to the authority an amount of up to 15% of the net present value of operational savings created by the closure of the electric generating facility, and such a transfer shall be deemed by the PUC to be a prudent action by the utility.

The bill specifies that the authority is governed by a 7-member board of directors appointed by the governor and specifies mandatory and suggested occupational experience for the directors. The authority is authorized to receive bond proceeds from a utility to which a financing order applies and use the bond proceeds to provide transition assistance and pay its reasonable and necessary administrative and operating costs.

Transition assistance is defined to include payment of retraining costs, including costs of apprenticeship programs and skilled worker retraining programs, for and financial assistance to directly displaced Colorado facility workers, compensation to Colorado local governments for lost property tax revenue directly resulting from the retirement of a facility, and similar payments, job retraining, assistance, and compensation for directly displaced Colorado workers and local

governments in areas that produce fuel used in the retired facility directly resulting from the elimination of the need for fuel at the facility. When determining how best to provide transition assistance to a local community, the authority must, in conjunction with each board of county commissioners, municipal governing body, and school district that includes all or a portion of the impacted community, establish and take into consideration the advice of a local advisory committee. The authority is subject to open meeting and open records requirements and is required to submit a report to specified committees of the general assembly that sets forth a complete and detailed financial and operating statement of the authority for any fiscal year for which the authority has provided transition assistance.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 41 to title 40 as follows:

ARTICLE 41

Colorado Energy Impact Assistance Act

PART 1

ENERGY IMPACT ASSISTANCE BONDS

40-41-101. Short title. THE SHORT TITLE OF THIS ARTICLE 41 IS THE "COLORADO ENERGY IMPACT ASSISTANCE ACT".

40-41-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) COLORADO'S ELECTRIC UTILITIES WILL CONTINUE TO FACE THE NEED TO RETIRE EXISTING ELECTRIC GENERATING FACILITIES TO REDUCE ELECTRICITY RATES FOR CUSTOMERS AND ENSURE THE HEALTH AND WELL-BEING OF COLORADO'S NATURAL ENVIRONMENT AND RESIDENTS;

(b) THE CLOSURE OF ELECTRIC GENERATING FACILITIES MAY HAVE DIRECT ECONOMIC IMPACTS ON COLORADO COMMUNITIES WHERE THE FACILITIES ARE LOCATED, ELECTRIC GENERATING FACILITY WORKERS, AND COMMUNITIES WHERE FUELS FOR THE FACILITIES ARE PRODUCED;

1 (c) CUSTOMERS OF COLORADO'S ELECTRIC UTILITIES HAVE AN
2 INTEREST IN ENSURING THAT THEIR UTILITIES ARE PROVIDING EFFICIENT
3 AND COST-EFFECTIVE ELECTRIC GENERATION;

4 (d) COLORADO COMMUNITIES AND WORKERS MAY BE DIRECTLY
5 AFFECTED BY THE CLOSURE OF ELECTRIC GENERATING FACILITIES, AND IT
6 IS IN THE BEST INTEREST OF THE STATE TO ENSURE THAT COLORADO'S
7 WORKFORCE IS ABLE TO ADAPT TO THE STATE'S CHANGING ENERGY
8 PORTFOLIO;

9 (e) THERE ARE ALTERNATIVE FINANCING MECHANISMS USED BY
10 TWENTY-ONE OTHER STATES SINCE 1997 THAT WILL RESULT IN LOWER
11 COSTS TO ELECTRIC UTILITY CUSTOMERS, AND THE USE OF THESE
12 MECHANISMS CAN ENSURE THAT BOTH THE COSTS OF RETIRING ELECTRIC
13 GENERATING FACILITIES LOCATED IN THE STATE AND TRANSITION COSTS
14 FOR DIRECTLY AFFECTED COLORADO COMMUNITIES AND ELECTRIC
15 GENERATING FACILITY WORKERS CAN BE FINANCED IN A WAY THAT
16 REDUCES THE TOTAL AMOUNT OF COSTS BEING INCLUDED IN CUSTOMER
17 RATES;

18 (f) CUSTOMER COSTS OF ALTERNATIVE FINANCING MECHANISMS
19 CAN BE MINIMIZED BY ACHIEVING THE HIGHEST POSSIBLE CREDIT RATING
20 FROM INDEPENDENT CREDIT RATING AGENCIES, WHICH REQUIRES SPECIAL
21 PROCEDURES AND CONDITIONS INCLUDING:

22 (I) THE USE OF LIMITED PURPOSE BANKRUPTCY-REMOTE
23 FINANCING ENTITIES TO ISSUE RATEPAYER-BACKED BONDS;

24 (II) THE CREATION OF A PROPERLY STRUCTURED AND
25 IMPLEMENTED ADJUSTMENT MECHANISM TO ADJUST THE CHARGE
26 DEDICATED TO THE REPAYMENT OF THE BONDS TO ENABLE CONSISTENT,
27 ACCURATE, AND TIMELY REMITTANCES TO THE FINANCING ENTITIES FOR

1 THE BENEFIT OF BONDHOLDERS; AND

2 (III) A STATE PLEDGE THAT CONSTITUTES AN ENFORCEABLE
3 PROMISE TO GUARANTEE THE PAYMENT OF PRINCIPAL AND INTEREST ON
4 SECURITIZED INVESTOR-OWNED ELECTRIC UTILITY RATEPAYER-BACKED
5 BONDS AS THOSE AMOUNTS BECOME LEGALLY DUE AND OWING; AND

6 (g) TO IMPLEMENT THIS ALTERNATIVE FINANCING MECHANISM, IT
7 IS NECESSARY TO AUTHORIZE THE PUBLIC UTILITIES COMMISSION TO
8 REVIEW AND APPROVE ONE OR MORE FINANCING ORDERS THAT ADVANCE
9 THESE GOALS IF IT DEEMS SUCH APPROVAL APPROPRIATE AND IN THE
10 INTEREST OF RATEPAYERS.

11 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

12 (a) IT IS THE POLICY OF THE STATE TO ASSIST COLORADO ELECTRIC
13 GENERATING FACILITY WORKERS WHO ARE DIRECTLY IMPACTED BY THE
14 RETIREMENT OF ELECTRIC GENERATING FACILITIES, THE COMMUNITIES
15 WHERE THE FACILITIES ARE LOCATED, AND THE COMMUNITIES WHERE
16 FUELS FOR THE FACILITIES ARE PRODUCED;

17 (b) IT IS THEREFORE IN THE INTEREST OF THE STATE AND ITS
18 CITIZENS TO ENCOURAGE AND FACILITATE THE USE OF SECURITIZED
19 RATEPAYER-BACKED BONDS AS A METHOD FOR ENABLING ELECTRIC
20 UTILITIES TO LOWER THE COST OF FINANCING THE RETIREMENT OF
21 ELECTRIC GENERATING FACILITIES UNDER CERTAIN CONDITIONS AND TO
22 EMPOWER THE PUBLIC UTILITIES COMMISSION TO REVIEW SUCH
23 SECURITIZATION MECHANISMS TO DETERMINE WHETHER THEY ARE
24 CONSISTENT WITH THE PUBLIC INTEREST AND WORTHY OF APPROVAL;

25 (c) THE PRIMARY PURPOSE OF THIS ACT IS TO AUTHORIZE THE
26 ISSUANCE OF LOW-COST SECURITIZED RATEPAYER-BACKED BONDS, THE
27 PROCEEDS OF WHICH MUST BE USED SOLELY:

1 (I) TO PROVIDE TRANSITION ASSISTANCE TO COLORADO
2 COMMUNITIES AND ELECTRIC GENERATING FACILITY WORKERS THAT ARE
3 DIRECTLY IMPACTED BY THE RETIREMENT OF ELECTRIC GENERATING
4 FACILITIES;

5 (II) TO LOWER RATES PAID BY ELECTRIC UTILITY CUSTOMERS BY
6 REDUCING FINANCING COSTS OF CERTAIN RETIRED ELECTRIC GENERATING
7 FACILITIES; AND

8 (III) TO MAKE AVAILABLE CAPITAL INVESTMENT FOR MODERNIZED
9 FACILITIES AND SERVICES INCLUDING LEAST-COST ELECTRIC GENERATING
10 FACILITIES AND OTHER SUPPLY-SIDE AND DEMAND-SIDE RESOURCES; AND

11 (d) AN ADDITIONAL PURPOSE OF THIS ACT IS TO CREATE THE
12 COLORADO ENERGY IMPACT ASSISTANCE AUTHORITY TO ASSIST WITH THE
13 ADMINISTRATION OF THE PORTION OF SECURITIZED RATEPAYER-BACKED
14 BOND PROCEEDS THAT IS DEDICATED TO TRANSITION ASSISTANCE FOR
15 DIRECTLY IMPACTED COLORADO COMMUNITIES AND ELECTRIC
16 GENERATING FACILITY WORKERS.

17 **40-41-103. Definitions.** AS USED IN THIS ARTICLE 41, FOR USE BY
18 THE COMMISSION AND THE REVIEW BY INDEPENDENT CREDIT RATING
19 AGENCIES THAT IS NECESSARY TO ACHIEVE THE HIGHEST POSSIBLE BOND
20 RATINGS, UNLESS THE CONTEXT OTHERWISE REQUIRES:

21 (1) "ANCILLARY AGREEMENT" MEANS ANY BOND, INSURANCE
22 POLICY, LETTER OF CREDIT, RESERVE ACCOUNT, SURETY BOND, INTEREST
23 RATE LOCK OR SWAP ARRANGEMENT, HEDGING ARRANGEMENT, LIQUIDITY
24 OR CREDIT SUPPORT ARRANGEMENT, OR OTHER FINANCIAL ARRANGEMENT
25 ENTERED INTO IN CONNECTION WITH CO-EIA BONDS THAT IS DESIGNED TO
26 PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE CO-EIA
27 BONDS OR TO MITIGATE THE RISK OF AN INCREASE IN INTEREST RATES.

1 (2) "ASSIGNEE" MEANS ANY PERSON TO WHICH AN INTEREST IN
2 CO-EIA PROPERTY IS SOLD, ASSIGNED, TRANSFERRED, OR CONVEYED,
3 OTHER THAN AS SECURITY, AND ANY SUCCESSOR TO OR SUBSEQUENT
4 ASSIGNEE OF SUCH A PERSON.

5 (3) "AUTHORITY" MEANS THE COLORADO ENERGY IMPACT
6 ASSISTANCE AUTHORITY CREATED IN SECTION 40-41-201 (1).

7 (4) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE AUTHORITY
8 CREATED IN SECTION 40-41-201 (2)(a).

9 (5) "BONDHOLDER" MEANS ANY HOLDER OR OWNER OF CO-EIA
10 BONDS.

11 (6) "CO-EIA" MEANS COLORADO ENERGY IMPACT ASSISTANCE.

12 (7) "CO-EIA BONDS" MEANS LOW-COST CORPORATE SECURITIES,
13 SUCH AS SENIOR SECURED BONDS, DEBENTURES, NOTES, CERTIFICATES OF
14 PARTICIPATION, CERTIFICATES OF BENEFICIAL INTEREST, CERTIFICATES OF
15 OWNERSHIP, OR OTHER EVIDENCES OF INDEBTEDNESS OR OWNERSHIP THAT
16 HAVE A SCHEDULED MATURITY OF NO LONGER THAN THIRTY YEARS AND
17 A FINAL LEGAL MATURITY DATE THAT IS NOT LATER THAN THIRTY-TWO
18 YEARS FROM THE ISSUE DATE, THAT ARE RATED AA OR AA2 OR BETTER BY
19 A MAJOR INDEPENDENT CREDIT RATING AGENCY AT THE TIME OF
20 ISSUANCE, AND THAT ARE ISSUED BY AN ELECTRIC UTILITY OR AN
21 ASSIGNEE PURSUANT TO A FINANCING ORDER, THE PROCEEDS OF WHICH
22 ARE USED TO RECOVER, FINANCE, OR REFINANCE COMMISSION-APPROVED
23 CO-EIA COSTS AND FINANCING COSTS, INCLUDING ASSISTANCE TO
24 AFFECTED WORKERS AND COMMUNITIES, AND THAT ARE SECURED BY OR
25 PAYABLE FROM CO-EIA PROPERTY. IF CERTIFICATES OF PARTICIPATION OR
26 OWNERSHIP ARE ISSUED, REFERENCES IN THIS SECTION TO PRINCIPAL,
27 INTEREST, OR PREMIUM REFER TO COMPARABLE AMOUNTS UNDER THOSE

1 CERTIFICATES.

2 (8) "CO-EIA CHARGES" MEANS CHARGES IN AMOUNTS
3 DETERMINED APPROPRIATE BY THE COMMISSION AND AUTHORIZED BY THE
4 COMMISSION IN A FINANCING ORDER IN ORDER TO PROVIDE A SOURCE OF
5 REVENUE SOLELY TO REPAY, FINANCE, OR REFINANCE CO-EIA COSTS AND
6 FINANCING COSTS THAT ARE IMPOSED ON AND ARE A PART OF ALL
7 CUSTOMER BILLS AND ARE COLLECTED IN FULL BY THE ELECTRIC UTILITY
8 TO WHICH THE FINANCING ORDER APPLIES, ITS SUCCESSORS OR ASSIGNEES,
9 OR A COLLECTION AGENT THROUGH A NONBYPASSABLE CHARGE THAT IS
10 SEPARATE AND APART FROM THE ELECTRIC UTILITY'S BASE RATES.

11 (9) (a) "CO-EIA COSTS" MEANS:

12 (I) (A) AT THE OPTION OF AND UPON PETITION BY AN ELECTRIC
13 UTILITY, AND AS APPROVED BY THE COMMISSION PURSUANT TO SECTION
14 40-41-105, THE PRETAX COSTS THAT THE ELECTRIC UTILITY HAS INCURRED
15 OR WILL INCUR THAT ARE CAUSED BY, ASSOCIATED WITH, OR REMAIN AS
16 A RESULT OF THE RETIREMENT OF AN ELECTRIC GENERATING FACILITY
17 LOCATED IN THE STATE.

18 (B) AS USED IN THIS SUBSECTION (9), "PRETAX COSTS", IF
19 APPROVED BY THE COMMISSION, INCLUDE, BUT ARE NOT LIMITED TO, THE
20 UNRECOVERED CAPITALIZED COST OF A RETIRED ELECTRIC GENERATING
21 FACILITY, COSTS OF DECOMMISSIONING AND RESTORING THE SITE OF THE
22 ELECTRIC GENERATING FACILITY, AND OTHER APPLICABLE CAPITAL AND
23 OPERATING COSTS, ACCRUED CARRYING CHARGES, DEFERRED EXPENSES,
24 REDUCTIONS FOR APPLICABLE INSURANCE AND SALVAGE PROCEEDS AND
25 THE COSTS OF RETIRING ANY EXISTING INDEBTEDNESS, FEES, COSTS, AND
26 EXPENSES TO MODIFY EXISTING DEBT AGREEMENTS OR FOR WAIVERS OR
27 CONSENTS RELATED TO EXISTING DEBT AGREEMENTS.

1 (II) AMOUNTS REQUIRED TO BE TRANSFERRED TO THE AUTHORITY
2 FOR TRANSITION ASSISTANCE AND THE PAYMENT OF THE AUTHORITY'S
3 REASONABLE AND NECESSARY ADMINISTRATIVE AND OPERATING COSTS AS
4 REQUIRED BY A FINANCING ORDER.

5 (III) PRETAX COSTS THAT AN ELECTRIC UTILITY HAS PREVIOUSLY
6 INCURRED RELATED TO THE COMMISSION-APPROVED CLOSURE OF AN
7 ELECTRIC GENERATING FACILITY OCCURRING BEFORE THE EFFECTIVE DATE
8 OF THIS SECTION.

9 (b) "CO-EIA COSTS" DO NOT INCLUDE ANY MONETARY PENALTY,
10 FINE, OR FORFEITURE ASSESSED AGAINST AN ELECTRIC UTILITY BY A
11 GOVERNMENT AGENCY OR COURT UNDER A FEDERAL OR STATE
12 ENVIRONMENTAL STATUTE, RULE, OR REGULATION.

13 (10) "CO-EIA PROPERTY" MEANS:

14 (a) ALL RIGHTS AND INTERESTS OF AN ELECTRIC UTILITY OR
15 SUCCESSOR OR ASSIGNEE OF AN ELECTRIC UTILITY UNDER A FINANCING
16 ORDER FOR THE RIGHT TO IMPOSE, BILL, COLLECT, AND RECEIVE CO-EIA
17 CHARGES AS IT IS AUTHORIZED TO DO SOLELY UNDER THE FINANCING
18 ORDER AND TO OBTAIN PERIODIC ADJUSTMENTS TO SUCH CO-EIA
19 CHARGES AS PROVIDED IN THE FINANCING ORDER; AND

20 (b) ALL REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENTS,
21 PAYMENTS, MONEY, OR PROCEEDS ARISING FROM THE RIGHTS AND
22 INTERESTS SPECIFIED IN SUBSECTION (10)(a) OF THIS SECTION,
23 REGARDLESS OF WHETHER SUCH REVENUE, COLLECTIONS, CLAIMS, RIGHTS
24 TO PAYMENT, PAYMENTS, MONEY, OR PROCEEDS ARE IMPOSED, BILLED,
25 RECEIVED, COLLECTED, OR MAINTAINED TOGETHER WITH OR COMMINGLED
26 WITH OTHER REVENUE, COLLECTIONS, RIGHTS TO PAYMENT, PAYMENTS,
27 MONEY, OR PROCEEDS.

1 (11) "CO-EIA REVENUE" MEANS ALL REVENUE, RECEIPTS,
2 COLLECTIONS, PAYMENTS, MONEY, CLAIMS, OR OTHER PROCEEDS ARISING
3 FROM CO-EIA PROPERTY.

4 (12) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF
5 THE STATE OF COLORADO.

6 (13) "CUSTOMER" MEANS A PERSON THAT TAKES ELECTRIC
7 DISTRIBUTION OR ELECTRIC TRANSMISSION SERVICE FROM AN ELECTRIC
8 UTILITY FOR CONSUMPTION OF ELECTRICITY IN THE STATE.

9 (14) "FINANCING COSTS" MEANS, IF APPROVED BY THE
10 COMMISSION IN A FINANCING ORDER, COSTS TO ISSUE, SERVICE, REPAY, OR
11 REFINANCE CO-EIA BONDS, WHETHER INCURRED OR PAID UPON ISSUANCE
12 OF THE CO-EIA BONDS OR OVER THE LIFE OF THE CO-EIA BONDS, AND
13 INCLUDES:

14 (a) PRINCIPAL, INTEREST, AND REDEMPTION PREMIUMS THAT ARE
15 PAYABLE ON CO-EIA BONDS;

16 (b) ANY PAYMENT REQUIRED UNDER AN ANCILLARY AGREEMENT
17 AND ANY AMOUNT REQUIRED TO FUND OR REPLENISH A RESERVE ACCOUNT
18 OR OTHER ACCOUNTS ESTABLISHED UNDER THE TERMS OF ANY INDENTURE,
19 ANCILLARY AGREEMENT, OR OTHER FINANCING DOCUMENT PERTAINING TO
20 CO-EIA BONDS;

21 (c) ANY OTHER DEMONSTRABLE COSTS RELATED TO ISSUING,
22 SUPPORTING, REPAYING, REFUNDING, AND SERVICING CO-EIA BONDS,
23 INCLUDING, BUT NOT LIMITED TO, SERVICING FEES, ACCOUNTING AND
24 AUDITING FEES, TRUSTEE FEES, LEGAL FEES, CONSULTING FEES, FINANCIAL
25 ADVISOR FEES, ADMINISTRATIVE FEES, PLACEMENT AND UNDERWRITING
26 FEES, CAPITALIZED INTEREST, RATING AGENCY FEES, STOCK EXCHANGE
27 LISTING AND COMPLIANCE FEES, SECURITY REGISTRATION FEES, FILING

1 FEES, INFORMATION TECHNOLOGY PROGRAMMING COSTS, AND ANY OTHER
2 DEMONSTRABLE COSTS NECESSARY TO OTHERWISE ENSURE AND
3 GUARANTEE THE TIMELY PAYMENT OF CO-EIA BONDS OR OTHER
4 AMOUNTS OR CHARGES PAYABLE IN CONNECTION WITH CO-EIA BONDS;

5 (d) ANY TAXES AND LICENSE FEES IMPOSED ON THE REVENUE
6 GENERATED FROM THE COLLECTION OF A CO-EIA CHARGE;

7 (e) ANY STATE AND LOCAL TAXES, INCLUDING FRANCHISE, SALES
8 AND USE, AND OTHER TAXES OR SIMILAR CHARGES, INCLUDING, BUT NOT
9 LIMITED TO, REGULATORY ASSESSMENT FEES, WHETHER PAID, PAYABLE,
10 OR ACCRUED; AND

11 (f) ANY COSTS INCURRED BY THE COMMISSION TO HIRE AND
12 COMPENSATE ADDITIONAL TEMPORARY STAFF NEEDED TO PERFORM ITS
13 RESPONSIBILITIES UNDER THIS ARTICLE 41 AND ENGAGE SPECIALIZED
14 COUNSEL AND EXPERT CONSULTANTS EXPERIENCED IN SECURITIZED
15 INVESTOR-OWNED ELECTRIC UTILITY RATEPAYER-BACKED BOND
16 FINANCING SIMILAR TO CO-EIA BONDS.

17 (15) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION
18 ISSUED PURSUANT TO SECTION 40-41-105 THAT GRANTS, IN WHOLE OR IN
19 PART, AN APPLICATION FILED PURSUANT TO SECTION 40-41-104 AND THAT
20 AUTHORIZES THE ISSUANCE OF CO-EIA BONDS IN ONE OR MORE SERIES,
21 THE IMPOSITION, CHARGING, AND COLLECTION OF CO-EIA CHARGES, AND
22 THE CREATION OF CO-EIA PROPERTY. IN A FINANCING ORDER, THE
23 COMMISSION MAY INCLUDE ANY CONDITIONS THAT ARE NECESSARY TO
24 PROMOTE THE PUBLIC INTEREST AND MAY GRANT RELIEF THAT IS
25 DIFFERENT FROM THAT WHICH WAS REQUESTED IN THE APPLICATION SO
26 LONG AS THE RELIEF IS WITHIN THE SCOPE OF THE MATTERS ADDRESSED IN
27 THE COMMISSION'S NOTICE OF THE APPLICATION.

1 (16) "FINANCING PARTY" MEANS HOLDERS OF CO-EIA BONDS AND
2 TRUSTEES, COLLATERAL AGENTS, ANY PARTY UNDER AN ANCILLARY
3 AGREEMENT, OR ANY OTHER PERSON ACTING FOR THE BENEFIT OF
4 HOLDERS OF CO-EIA BONDS.

5 (17) "FINANCING STATEMENT" HAS THE SAME MEANING AS SET
6 FORTH IN SECTION 4-9-102 (39).

7 (18) "NONBYPASSABLE" MEANS THAT THE PAYMENT OF A CO-EIA
8 CHARGE REQUIRED TO REPAY BONDS AND RELATED COSTS MAY NOT BE
9 AVOIDED BY ANY CUSTOMER LOCATED WITHIN AN ELECTRIC UTILITY
10 SERVICE AREA, BUT MUST BE PAID BY:

11 (a) ALL EXISTING AND FUTURE CUSTOMERS RECEIVING
12 TRANSMISSION OR DISTRIBUTION SERVICE FROM THE ELECTRIC UTILITY OR
13 ITS SUCCESSORS OR ASSIGNEES UNDER COMMISSION-APPROVED RATE
14 SCHEDULES OR UNDER SPECIAL CONTRACTS, EVEN IF A CUSTOMER ELECTS
15 TO PURCHASE ELECTRICITY FROM AN ELECTRIC SUPPLIER OTHER THAN THE
16 UTILITY; AND

17 (b) ANY PERSON LOCATED WITHIN THE ELECTRIC UTILITY SERVICE
18 AREA THAT MAY SUBSEQUENTLY RECEIVE ELECTRIC TRANSMISSION OR
19 DISTRIBUTION SERVICE FROM ANOTHER ELECTRIC UTILITY OPERATING IN
20 THE SAME SERVICE AREA.

21 (19) "SUCCESSOR" MEANS, WITH RESPECT TO ANY LEGAL ENTITY,
22 ANOTHER LEGAL ENTITY THAT SUCCEEDS BY OPERATION OF LAW TO THE
23 RIGHTS AND OBLIGATIONS OF THE FIRST LEGAL ENTITY PURSUANT TO ANY
24 BANKRUPTCY, REORGANIZATION, RESTRUCTURING, OTHER INSOLVENCY
25 PROCEEDING, MERGER, ACQUISITION, CONSOLIDATION, OR SALE OR
26 TRANSFER OF ASSETS, WHETHER ANY OF THESE OCCUR DUE TO A
27 RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY OR OTHERWISE.

1 (20) "TRANSITION ASSISTANCE" MEANS ASSISTANCE PROVIDED BY
2 OR DIRECTED BY THE AUTHORITY USING CO-EIA BOND PROCEEDS
3 TRANSFERRED BY AN ELECTRIC UTILITY TO THE AUTHORITY PURSUANT TO
4 THE TERMS OF A FINANCING ORDER TO ASSIST COLORADO COMMUNITIES
5 THAT ARE DIRECTLY IMPACTED BY THE RETIREMENT OF AN ELECTRIC
6 GENERATING FACILITY AND MAY INCLUDE, WITHOUT LIMITATION:

7 (a) PAYMENT OF RETRAINING COSTS, INCLUDING COSTS OF ANY
8 APPRENTICESHIP PROGRAM, AS DEFINED IN SECTION 8-83-303 (2), OR
9 SKILLED WORKER TRAINING PROGRAM, AS DEFINED IN SECTION 8-83-303
10 (10), FOR DIRECTLY DISPLACED ELECTRIC GENERATING FACILITY
11 WORKERS;

12 (b) FINANCIAL ASSISTANCE FOR DIRECTLY DISPLACED ELECTRIC
13 GENERATING FACILITY WORKERS;

14 (c) FOR A PERIOD OF NO MORE THAN FIVE YEARS, COMPENSATION
15 TO LOCAL GOVERNMENTS FOR LOSSES OF PROPERTY TAX REVENUE
16 RESULTING DIRECTLY FROM THE RETIREMENT OF THE ELECTRIC
17 GENERATING FACILITY, WHICH COMPENSATION MAY BE REDUCED
18 ANNUALLY DURING THE PERIOD DURING WHICH IT IS PROVIDED;

19 (d) PAYMENT OF RETRAINING COSTS, INCLUDING COSTS OF ANY
20 APPRENTICESHIP PROGRAM, AS DEFINED IN SECTION 8-83-303 (2), OR
21 SKILLED WORKER TRAINING PROGRAM, AS DEFINED IN SECTION 8-83-303
22 (10), AND PROVISION OF FINANCIAL ASSISTANCE, INCLUDING WAGE
23 SUPPORT OR SUPPLEMENTAL RETIREMENT SUPPORT, FOR COLORADO
24 WORKERS AND ASSISTANCE TO LOCAL GOVERNMENTS WITH LOSSES OF TAX
25 REVENUE DIRECTLY RELATED TO PRODUCTION OF FUEL PREVIOUSLY USED
26 IN THE RETIRED FACILITIES; AND

27 (e) JOB RETRAINING AND EDUCATION FOR WORKERS WHO ARE

1 COLORADO RESIDENTS WHO WERE DIRECTLY INVOLVED IN THE TRANSPORT
2 OF FUEL TO A RETIRED COLORADO ELECTRIC GENERATING FACILITY AND
3 WHO ARE LAID OFF OR EXPERIENCE REDUCED WORK SCHEDULES
4 RESULTING FROM THE RETIREMENT OF THE ELECTRIC GENERATING
5 FACILITY.

6 **40-41-104. Financing orders - application requirements.**

7 (1) AN INVESTOR-OWNED ELECTRIC UTILITY MAY APPLY TO THE
8 COMMISSION FOR A FINANCING ORDER AS AUTHORIZED BY THIS SECTION.

9 (2)(a) A REGULATED ELECTRIC UTILITY MAY FILE AN APPLICATION
10 FOR APPROVAL TO ISSUE CO-EIA BONDS IN ONE OR MORE SERIES, IMPOSE,
11 CHARGE, AND COLLECT CO-EIA CHARGES, AND CREATE CO-EIA
12 PROPERTY RELATED TO THE RETIREMENT OF AN ELECTRIC GENERATING
13 FACILITY IN COLORADO THAT HAS PREVIOUSLY BEEN APPROVED BY THE
14 COMMISSION.

15 (b) THE COMMISSION SHALL TAKE FINAL ACTION TO APPROVE,
16 DENY, OR MODIFY ANY APPLICATION FOR A FINANCING ORDER AS
17 DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION IN A FINAL ORDER
18 ISSUED IN ACCORDANCE WITH THE COMMISSION'S RULES FOR ADDRESSING
19 APPLICATIONS.

20 (3) IN ADDITION TO ANY OTHER INFORMATION REQUIRED BY THE
21 COMMISSION, AN APPLICATION FOR A FINANCING ORDER MUST INCLUDE
22 THE FOLLOWING INFORMATION:

23 (a) AN ESTIMATED SCHEDULE FOR THE PREVIOUSLY APPROVED
24 RETIREMENT;

25 (b) A SPECIFICATION OF THE EFFECTS OF THE PROPOSED CO-EIA
26 BOND FINANCING ON THE PREVIOUSLY APPROVED RETIREMENT;

27 (c) A PROPOSED METHODOLOGY FOR ALLOCATING THE REVENUE

1 REQUIREMENT FOR THE CO-EIA CHARGE AMONG CUSTOMER CLASSES;

2 (d) A DESCRIPTION OF THE NONBYPASSABLE CO-EIA CHARGE
3 REQUIRED TO BE PAID BY CUSTOMERS WITHIN THE ELECTRIC UTILITY'S
4 SERVICE AREA FOR RECOVERY OF CO-EIA COSTS;

5 (e) AN ESTIMATE OF THE NET PRESENT VALUE OF ELECTRIC UTILITY
6 CUSTOMER SAVINGS EXPECTED TO RESULT IF THE FINANCING ORDER IS
7 ISSUED AS DETERMINED BY A NET PRESENT VALUE COMPARISON BETWEEN
8 THE COSTS TO CUSTOMERS THAT ARE EXPECTED TO RESULT FROM THE
9 FINANCING OF THE UNDEPRECIATED BALANCES OF ELECTRIC GENERATING
10 FACILITIES WITH CO-EIA BONDS AND THE COSTS THAT WOULD RESULT
11 FROM THE APPLICATION OF TRADITIONAL ELECTRIC UTILITY FINANCING
12 MECHANISMS TO THE SAME UNDEPRECIATED BALANCES; AND

13 (f) ONE OR MORE ALTERNATIVE FINANCING SCENARIOS IN
14 ADDITION TO THE PREFERRED SCENARIO CONTAINED IN THE APPLICATION.

15 **40-41-105. Issuance of financing orders.** (1) FOLLOWING
16 NOTICE AND HEARING ON AN APPLICATION FOR A FINANCING ORDER AS
17 REQUIRED BY THE COMMISSION'S RULES, PRACTICE, AND PROCEDURE, THE
18 COMMISSION MAY ISSUE A FINANCING ORDER IF THE COMMISSION FINDS
19 THAT:

20 (a) THE CO-EIA COSTS DESCRIBED IN THE APPLICATION RELATED
21 TO THE RETIREMENT OF THE ELECTRIC GENERATING FACILITIES ARE
22 REASONABLE;

23 (b) THE PROPOSED ISSUANCE OF CO-EIA BONDS AND THE
24 IMPOSITION AND COLLECTION OF CO-EIA CHARGES:

25 (I) ARE JUST AND REASONABLE;

26 (II) ARE CONSISTENT WITH THE PUBLIC INTEREST;

27 (III) CONSTITUTE A PRUDENT AND REASONABLE MECHANISM FOR

1 THE FINANCING OF THE CO-EIA COSTS DESCRIBED IN THE APPLICATION;
2 AND

3 (IV) WILL PROVIDE SUBSTANTIAL, TANGIBLE, AND QUANTIFIABLE
4 BENEFITS TO CUSTOMERS THAT ARE GREATER THAN THE BENEFITS THAT
5 WOULD HAVE BEEN ACHIEVED ABSENT THE ISSUANCE OF CO-EIA BONDS;
6 AND

7 (c) THE PROPOSED STRUCTURING, MARKETING, AND PRICING OF
8 THE CO-EIA BONDS WILL:

9 (I) SIGNIFICANTLY LOWER OVERALL COSTS TO CUSTOMERS OR
10 SIGNIFICANTLY MITIGATE RATE IMPACTS TO CUSTOMERS RELATIVE TO
11 TRADITIONAL METHODS OF FINANCING; AND

12 (II) ACHIEVE THE MAXIMUM NET PRESENT VALUE OF CUSTOMER
13 SAVINGS, AS DETERMINED BY THE COMMISSION IN A FINANCING ORDER,
14 CONSISTENT WITH MARKET CONDITIONS AT THE TIME OF SALE AND THE
15 TERMS OF THE FINANCING ORDER.

16 (2) THE FINANCING ORDER MUST:

17 (a) DETERMINE THE MAXIMUM AMOUNT OF CO-EIA COSTS THAT
18 MAY BE FINANCED FROM PROCEEDS OF CO-EIA BONDS AUTHORIZED TO BE
19 ISSUED BY THE FINANCING ORDER;

20 (b) PROVIDE THAT AN AMOUNT OF CO-EIA BOND PROCEEDS
21 EQUAL TO FIFTEEN PERCENT OF THE NET PRESENT VALUE OF ELECTRIC
22 UTILITY CUSTOMER SAVINGS ESTIMATED PURSUANT TO SECTION 40-41-104

23 (3)(e) BE TRANSFERRED TO THE AUTHORITY BY THE ELECTRIC UTILITY TO
24 WHICH THE FINANCING ORDER APPLIES FOR USE BY THE AUTHORITY IN
25 PROVIDING TRANSITION ASSISTANCE AS REQUIRED BY SECTION 40-41-202
26 AND PAYING ITS REASONABLE AND NECESSARY ADMINISTRATIVE AND
27 OPERATING COSTS AS AUTHORIZED BY SECTION 40-41-201 (3)(f);

1 (c) DESCRIBE THE PROPOSED CUSTOMER BILLING MECHANISM FOR
2 CO-EIA CHARGES AND INCLUDE A FINDING THAT THE MECHANISM IS JUST
3 AND REASONABLE;

4 (d) DESCRIBE THE FINANCING COSTS THAT MAY BE RECOVERED
5 THROUGH CO-EIA CHARGES AND THE PERIOD OVER WHICH THE COSTS
6 MAY BE RECOVERED, WHICH MUST END NO EARLIER THAN THE DATE OF
7 FINAL LEGAL MATURITY OF THE CO-EIA BONDS;

8 (e) DESCRIBE THE CO-EIA PROPERTY THAT IS CREATED AND THAT
9 MAY BE USED TO PAY, AND SECURE THE PAYMENT OF, THE CO-EIA BONDS
10 AND FINANCING COSTS AUTHORIZED IN THE FINANCING ORDER;

11 (f) AUTHORIZE THE APPLICANT ELECTRIC UTILITY TO FINANCE
12 CO-EIA COSTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF
13 CO-EIA BONDS. AN ELECTRIC UTILITY IS NOT REQUIRED TO SECURE A
14 SEPARATE FINANCING ORDER FOR EACH ISSUANCE OF CO-EIA BONDS OR
15 FOR EACH SCHEDULED PHASE OF THE PREVIOUSLY APPROVED RETIREMENT
16 OF ELECTRIC GENERATING FACILITIES APPROVED IN THE FINANCING ORDER.

17 (g) INCLUDE A FORMULA-BASED ADJUSTMENT MECHANISM FOR
18 MAKING EXPEDITIOUS PERIODIC ADJUSTMENTS IN THE CO-EIA CHARGES
19 THAT CUSTOMERS ARE REQUIRED TO PAY PURSUANT TO THE FINANCING
20 ORDER AND FOR MAKING ANY ADJUSTMENTS THAT ARE NECESSARY TO
21 CORRECT FOR ANY OVER COLLECTION OR UNDER COLLECTION OF THE
22 CO-EIA CHARGES IN PAST PERIODS OR TO OTHERWISE GUARANTEE THE
23 TIMELY PAYMENT OF CO-EIA BONDS AND FINANCING COSTS AND OTHER
24 REQUIRED AMOUNTS AND CHARGES PAYABLE IN CONNECTION WITH
25 CO-EIA BONDS;

26 (h) INCLUDE ANY ADDITIONAL FINDINGS OR CONCLUSIONS DEEMED
27 APPROPRIATE BY THE COMMISSION;

1 (i) SPECIFY THE DEGREE OF FLEXIBILITY AFFORDED TO THE
2 ELECTRIC UTILITY IN ESTABLISHING THE TERMS AND CONDITIONS OF THE
3 CO-EIA BONDS, INCLUDING, BUT NOT LIMITED TO, REPAYMENT
4 SCHEDULES, EXPECTED INTEREST RATES, AND OTHER FINANCING COSTS;

5 (j) SPECIFY THE TIMING OF ACTIONS REQUIRED BY THE ORDER SO
6 THAT:

7 (I) THE CO-EIA BONDS ARE ISSUED AS SOON AS FEASIBLE
8 FOLLOWING THE ISSUANCE OF THE FINANCING ORDER, INDEPENDENT OF
9 THE SCHEDULE OF CLOSING AND DECOMMISSIONING OF THE ELECTRIC
10 GENERATING FACILITY;

11 (II) THE ENERGY ASSISTANCE FUNDS ARE TRANSFERRED TO THE
12 AUTHORITY AS SOON AS FEASIBLE, BUT NO LATER THAN THE EARLIER OF
13 THE DATE ON WHICH THE ELECTRIC GENERATING FACILITY CEASES
14 OPERATION; AND

15 (III) THE APPLICANT UTILITY FILES TO REDUCE ITS RATES AS
16 REQUIRED IN SUBSECTION (4) OF THIS SECTION SIMULTANEOUSLY WITH
17 THE INCEPTION OF THE CO-EIA CHARGES AND INDEPENDENTLY OF THE
18 SCHEDULE OF CLOSING AND DECOMMISSIONING OF THE ELECTRIC
19 GENERATING FACILITY; AND

20 (k) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY
21 DIFFERENCE BETWEEN THE PROJECTED PRETAX COSTS INCLUDED IN THE
22 AMOUNT FINANCED BY CO-EIA BONDS AND THE FINAL ACTUAL PRETAX
23 COSTS INCURRED BY THE UTILITY IN RETIRING THE ELECTRIC GENERATING
24 FACILITY. THE RECONCILIATION MAY AFFECT THE UTILITY'S BASE RATES
25 OR ANY RIDER ADOPTED PURSUANT TO SUBSECTION (4) OF THIS SECTION,
26 BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE ASSOCIATED
27 CO-EIA CHARGES PAID BY CUSTOMERS.

1 (3) A FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MUST
2 PERMIT AND MAY REQUIRE THE CREATION OF AN ELECTRIC UTILITY'S
3 CO-EIA PROPERTY PURSUANT TO SUBSECTION (2)(e) OF THIS SECTION TO
4 BE CONDITIONED UPON, AND SIMULTANEOUS WITH, THE SALE OR OTHER
5 TRANSFER OF THE CO-EIA PROPERTY TO AN ASSIGNEE AND THE PLEDGE
6 OF THE CO-EIA PROPERTY TO SECURE CO-EIA BONDS.

7 (4) A FINANCING ORDER SHALL REQUIRE THE APPLICANT UTILITY,
8 SIMULTANEOUSLY WITH THE INCEPTION OF THE COLLECTION OF CO-EIA
9 CHARGES, TO REDUCE ITS RATES THROUGH A REDUCTION IN BASE RATES
10 OR BY A NEGATIVE RIDER ON CUSTOMER BILLS IN AN AMOUNT EQUAL TO
11 THE REVENUE REQUIREMENT ASSOCIATED WITH THE UTILITY ASSETS BEING
12 FINANCED BY CO-EIA BONDS.

13 **40-41-106. Effect of financing order.** (1) A FINANCING ORDER
14 REMAINS IN EFFECT UNTIL THE CO-EIA BONDS ISSUED AS AUTHORIZED BY
15 THE FINANCING ORDER HAVE BEEN PAID IN FULL AND ALL FINANCING
16 COSTS RELATING TO THE CO-EIA BONDS HAVE BEEN PAID IN FULL.

17 (2) A FINANCING ORDER REMAINS IN EFFECT AND UNABATED
18 NOTWITHSTANDING THE BANKRUPTCY, REORGANIZATION, OR INSOLVENCY
19 OF THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES OR
20 ANY AFFILIATE OF THE ELECTRIC UTILITY OR SUCCESSOR ENTITY OR
21 ASSIGNEE.

22 (3) A FINANCING ORDER IS IRREVOCABLE, AND THE COMMISSION
23 MAY NOT REDUCE, IMPAIR, POSTPONE, OR TERMINATE CO-EIA CHARGES
24 APPROVED IN A FINANCING ORDER OR IMPAIR CO-EIA PROPERTY OR THE
25 COLLECTION OR RECOVERY OF CO-EIA REVENUE.

26 (4) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, UPON ITS
27 OWN MOTION OR AT THE REQUEST OF AN ELECTRIC UTILITY OR ANY OTHER

1 PERSON, THE COMMISSION MAY COMMENCE A PROCEEDING AND ISSUE A
2 SUBSEQUENT FINANCING ORDER THAT PROVIDES FOR REFINANCING,
3 RETIRING, OR REFUNDING CO-EIA BONDS ISSUED PURSUANT TO THE
4 ORIGINAL FINANCING ORDER IF:

5 (a) THE COMMISSION MAKES ALL OF THE FINDINGS SPECIFIED IN
6 SECTION 40-41-105 (1) WITH RESPECT TO THE SUBSEQUENT FINANCING
7 ORDER; AND

8 (b) THE MODIFICATION PROVIDED FOR IN THE SUBSEQUENT
9 FINANCING ORDER DOES NOT IMPAIR IN ANY WAY THE COVENANTS AND
10 TERMS OF THE CO-EIA BONDS TO BE REFINANCED, RETIRED, OR
11 REFUNDED.

12 **40-41-107. Effect on commission jurisdiction.** (1) EXCEPT AS
13 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF THE
14 COMMISSION ISSUES A FINANCING ORDER TO AN ELECTRIC UTILITY, THE
15 COMMISSION SHALL NOT, IN EXERCISING ITS POWERS AND CARRYING OUT
16 ITS DUTIES PURSUANT TO THIS ARTICLE 41:

17 (a) CONSIDER THE CO-EIA BONDS ISSUED PURSUANT TO THE
18 FINANCING ORDER TO BE DEBT OF THE ELECTRIC UTILITY OTHER THAN FOR
19 INCOME TAX PURPOSES UNLESS IT IS NECESSARY TO CONSIDER THE
20 CO-EIA BONDS TO BE SUCH DEBT TO ACHIEVE CONSISTENCY WITH
21 PREVAILING UTILITY DEBT RATING METHODOLOGIES;

22 (b) CONSIDER THE CO-EIA CHARGES PAID UNDER THE FINANCING
23 ORDER TO BE REVENUE OF THE ELECTRIC UTILITY;

24 (c) CONSIDER THE CO-EIA COSTS OR FINANCING COSTS SPECIFIED
25 IN THE FINANCING ORDER TO BE THE REGULATED COSTS OR ASSETS OF THE
26 ELECTRIC UTILITY; OR

27 (d) DETERMINE ANY PRUDENT ACTION TAKEN BY AN ELECTRIC

1 UTILITY THAT IS CONSISTENT WITH THE FINANCING ORDER TO BE UNJUST
2 OR UNREASONABLE.

3 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION:

4 (a) AFFECTS THE AUTHORITY OF THE COMMISSION TO APPLY OR
5 MODIFY ANY BILLING MECHANISM DESIGNED TO RECOVER CO-EIA
6 CHARGES;

7 (b) PREVENTS OR PRECLUDES THE COMMISSION FROM
8 INVESTIGATING THE COMPLIANCE OF AN ELECTRIC UTILITY WITH THE
9 TERMS AND CONDITIONS OF A FINANCING ORDER AND REQUIRING
10 COMPLIANCE WITH THE FINANCING ORDER; OR

11 (c) PREVENTS OR PRECLUDES THE COMMISSION FROM IMPOSING
12 REGULATORY SANCTIONS AGAINST AN ELECTRIC UTILITY FOR FAILURE TO
13 COMPLY WITH THE TERMS AND CONDITIONS OF A FINANCING ORDER OR THE
14 REQUIREMENTS OF THIS ARTICLE 41.

15 (3) THE COMMISSION MAY NOT REFUSE TO ALLOW THE RECOVERY
16 OF ANY COSTS ASSOCIATED WITH THE RETIREMENT OF ELECTRIC
17 GENERATING FACILITIES BY AN ELECTRIC UTILITY SOLELY BECAUSE THE
18 ELECTRIC UTILITY HAS ELECTED TO FINANCE THOSE ACTIVITIES THROUGH
19 A FINANCING MECHANISM OTHER THAN CO-EIA BONDS.

20 **40-41-108. Electric utility customer protection - legislative**
21 **declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES
22 THAT:

23 (a) THE USE OF CO-EIA BOND FINANCING WILL BRING
24 SUBSTANTIAL BENEFITS TO COLORADO ELECTRIC UTILITY CUSTOMERS AND
25 TO COLORADO ELECTRIC GENERATING FACILITY WORKERS AND COLORADO
26 COMMUNITIES THAT ARE DIRECTLY IMPACTED BY THE RETIREMENT OF
27 ELECTRIC GENERATING FACILITIES; AND

1 (b) BECAUSE THE COMMISSION'S APPROVAL OF A FINANCING ORDER
2 IS IRREVOCABLE, TYPICALLY ADDRESSES VERY LARGE AMOUNTS OF
3 FINANCING UNDERTAKEN PURSUANT TO THIS ARTICLE 41, AND IS NOT
4 REVIEWABLE BY FUTURE COMMISSIONS, IN ADDITION TO ITS OTHER
5 POWERS AND DUTIES, THE COMMISSION HAS THE DUTY TO PERFORM AND
6 AUTHORITY REQUIRED TO PERFORM COMPREHENSIVE DUE DILIGENCE IN ITS
7 EVALUATION OF AN APPLICATION FOR A FINANCING ORDER AND HAS THE
8 DUTY AND AUTHORITY TO OVERSEE THE PROCESS USED TO STRUCTURE,
9 MARKET, AND PRICE CO-EIA BONDS.

10 (2) IN ADDITION TO ANY OTHER AUTHORITY OF THE COMMISSION:

11 (a) THE COMMISSION MAY ATTACH SUCH CONDITIONS TO THE
12 APPROVAL OF A FINANCING ORDER AS THE COMMISSION DEEMS
13 APPROPRIATE TO MAXIMIZE THE FINANCIAL BENEFITS OR MINIMIZE THE
14 FINANCIAL RISKS OF THE TRANSACTION TO CUSTOMERS AND TO DIRECTLY
15 IMPACTED COLORADO WORKERS AND COMMUNITIES;

16 (b) THE COMMISSION MAY SPECIFY DETAILS OF THE PROCESS USED
17 TO STRUCTURE, MARKET, AND PRICE CO-EIA BONDS, INCLUDING THE
18 SELECTION OF THE UNDERWRITER OR UNDERWRITERS;

19 (c) THE COMMISSION SHALL REVIEW AND DETERMINE THE
20 REASONABLENESS OF ALL PROPOSED UP-FRONT AND ONGOING FINANCING
21 COSTS; AND

22 (d) THE COMMISSION SHALL ENSURE THAT THE STRUCTURING,
23 MARKETING, AND PRICING OF CO-EIA BONDS MAXIMIZES NET PRESENT
24 VALUE CUSTOMER SAVINGS, CONSISTENT WITH MARKET CONDITIONS AND
25 THE TERMS OF THE FINANCING ORDER.

26 (3) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF
27 CO-EIA BONDS, THE APPLICANT ELECTRIC UTILITY SHALL FILE WITH THE

1 COMMISSION INFORMATION REGARDING THE ACTUAL UP-FRONT AND
2 ONGOING FINANCING COSTS OF THE CO-EIA BONDS. THE COMMISSION
3 SHALL REVIEW THE PRUDENCE OF THE ELECTRIC UTILITY'S ACTION TO
4 DETERMINE WHETHER THE COSTS RESULTED IN THE LOWEST OVERALL
5 COSTS THAT WERE REASONABLY CONSISTENT WITH BOTH MARKET
6 CONDITIONS AT THE TIME OF THE ISSUANCE AND THE TERMS OF THE
7 FINANCING ORDER. IF THE COMMISSION DETERMINES THAT THE ELECTRIC
8 UTILITY'S ACTIONS WERE NOT PRUDENT OR WERE INCONSISTENT WITH THE
9 FINANCING ORDER, THE COMMISSION MAY APPLY ANY REMEDIES THAT ARE
10 AVAILABLE TO IT UNDER ARTICLE 7 OF THIS TITLE 40; EXCEPT THAT THE
11 COMMISSION SHALL NOT APPLY ANY REMEDY THAT HAS THE EFFECT,
12 DIRECTLY OR INDIRECTLY, OF IMPAIRING THE SECURITY FOR THE CO-EIA
13 BONDS.

14 (4) IN PERFORMING ITS RESPONSIBILITIES UNDER THIS ARTICLE 41,
15 THE COMMISSION SHALL ENGAGE OUTSIDE CONSULTANTS AND COUNSEL
16 EXPERIENCED IN SECURITIZED INVESTOR-OWNED ELECTRIC UTILITY
17 RATEPAYER-BACKED BOND FINANCING SIMILAR TO CO-EIA BONDS, AND
18 THE EXPENSES ASSOCIATED WITH THE ENGAGEMENT SHALL BE INCLUDED
19 AS FINANCING COSTS AND INCLUDED IN THE CO-EIA CHARGE, ARE NOT AN
20 OBLIGATION OF THE STATE, AND ARE ASSIGNED SOLELY TO THE
21 TRANSACTION. IN ADDITION, EXPENSES INCURRED BY THE COMMISSION TO
22 HIRE AND COMPENSATE ADDITIONAL TEMPORARY STAFF NEEDED TO
23 PERFORM ITS RESPONSIBILITIES UNDER THIS ARTICLE 41 SHALL BE
24 INCLUDED AS FINANCING COSTS AND INCLUDED IN THE CO-EIA CHARGE.

25 (5) IF A UTILITY'S APPLICATION FOR A FINANCING ORDER IS DENIED
26 OR WITHDRAWN OR FOR ANY REASON NO CO-EIA BONDS ARE ISSUED, THE
27 COMMISSION'S COSTS OF RETAINING EXPERT CONSULTANTS, AS

1 AUTHORIZED BY SUBSECTION (4) OF THIS SECTION, SHALL BE PAID BY THE
2 APPLICANT UTILITY AND SHALL BE CONSIDERED BY THE COMMISSION AS A
3 PRUDENT DEFERRED EXPENSE FOR RECOVERY IN THE UTILITY'S FUTURE
4 RATES.

5 **40-41-109. Judicial review of financing orders.** A FINANCING
6 ORDER IS A FINAL ORDER OF THE COMMISSION. NOTWITHSTANDING THE
7 PROVISIONS OF SECTION 40-6-115 (5) SPECIFYING PROPER VENUE FOR
8 PETITION FILINGS, A PARTY AGGRIEVED BY THE ISSUANCE OF A FINANCING
9 ORDER MAY PETITION FOR SUSPENSION AND REVIEW OF THE FINANCING
10 ORDER ONLY IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF
11 DENVER. IN THE CASE OF ANY PETITION FOR SUSPENSION AND REVIEW, THE
12 COURT SHALL PROCEED TO HEAR AND DETERMINE THE ACTION AS
13 EXPEDITIOUSLY AS PRACTICABLE AND SHALL GIVE THE ACTION
14 PRECEDENCE OVER OTHER MATTERS NOT ACCORDED SIMILAR PRECEDENCE
15 BY LAW.

16 **40-41-110. Electric utilities - duties.** (1) THE ELECTRIC BILLS OF
17 AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER AND
18 CAUSED CO-EIA BONDS TO BE ISSUED:

19 (a) MUST EXPLICITLY REFLECT THAT A PORTION OF THE CHARGES
20 ON THE BILL REPRESENTS CO-EIA CHARGES APPROVED IN A FINANCING
21 ORDER ISSUED TO THE ELECTRIC UTILITY AND, IF THE CO-EIA PROPERTY
22 HAS BEEN TRANSFERRED TO AN ASSIGNEE, MUST INCLUDE A STATEMENT
23 THAT THE ASSIGNEE IS THE OWNER OF THE RIGHTS TO CO-EIA CHARGES
24 AND THAT THE ELECTRIC UTILITY OR OTHER ENTITY, IF APPLICABLE, IS
25 ACTING AS A COLLECTION AGENT OR SERVICER FOR THE ASSIGNEE;

26 (b) MUST INCLUDE THE CO-EIA CHARGE ON EACH CUSTOMER'S
27 BILL AS A SEPARATE LINE ITEM TITLED "ENERGY IMPACT ASSISTANCE

1 CHARGE" AND MAY INCLUDE BOTH THE RATE AND THE AMOUNT OF THE
2 CHARGE ON EACH BILL. THE FAILURE OF AN ELECTRIC UTILITY TO COMPLY
3 WITH THIS SUBSECTION (1) DOES NOT INVALIDATE, IMPAIR, OR AFFECT ANY
4 FINANCING ORDER, CO-EIA PROPERTY, CO-EIA CHARGE, OR CO-EIA
5 BONDS, BUT DOES SUBJECT THE ELECTRIC UTILITY TO PENALTIES UNDER
6 APPLICABLE COMMISSION RULES; AND

7 (c) MUST EXPLAIN TO CUSTOMERS IN AN ANNUAL FILING WITH THE
8 COMMISSION THE RATE IMPACT THAT FINANCING THE RETIREMENT OF
9 ELECTRIC GENERATING FACILITIES HAS HAD ON CUSTOMER RATES.

10 (2) AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER
11 AND CAUSED CO-EIA BONDS TO BE ISSUED MUST DEMONSTRATE IN AN
12 ANNUAL FILING WITH THE COMMISSION THAT CO-EIA REVENUES ARE
13 APPLIED SOLELY TO THE REPAYMENT OF CO-EIA BONDS AND OTHER
14 FINANCING COSTS.

15 **40-41-111. CO-EIA property.** (1) CO-EIA PROPERTY THAT IS
16 DESCRIBED IN A FINANCING ORDER CONSTITUTES AN EXISTING PRESENT
17 PROPERTY RIGHT OR INTEREST IN AN EXISTING PRESENT PROPERTY RIGHT
18 EVEN THOUGH THE IMPOSITION AND COLLECTION OF CO-EIA CHARGES
19 DEPENDS ON THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER IS
20 ISSUED PERFORMING ITS SERVICING FUNCTIONS RELATING TO THE
21 COLLECTION OF CO-EIA CHARGES AND ON FUTURE ELECTRICITY
22 CONSUMPTION. THE PROPERTY RIGHT OR INTEREST EXISTS REGARDLESS OF
23 WHETHER THE REVENUES OR PROCEEDS ARISING FROM THE CO-EIA
24 PROPERTY HAVE BEEN BILLED, HAVE ACCRUED, OR HAVE BEEN COLLECTED
25 AND NOTWITHSTANDING THE FACT THAT THE VALUE OR AMOUNT OF THE
26 PROPERTY RIGHT OR INTEREST IS DEPENDENT ON THE FUTURE PROVISION
27 OF SERVICE TO CUSTOMERS BY THE ELECTRIC UTILITY OR A SUCCESSOR OR

1 ASSIGNEE OF THE ELECTRIC UTILITY.

2 (2) CO-EIA PROPERTY DESCRIBED IN A FINANCING ORDER EXISTS
3 UNTIL ALL CO-EIA BONDS ISSUED PURSUANT TO THE FINANCING ORDER
4 ARE PAID IN FULL AND ALL FINANCING COSTS AND OTHER COSTS OF THE
5 CO-EIA BONDS HAVE BEEN RECOVERED IN FULL.

6 (3) ALL OR ANY PORTION OF CO-EIA PROPERTY DESCRIBED IN A
7 FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MAY BE TRANSFERRED,
8 SOLD, CONVEYED, OR ASSIGNED TO A SUCCESSOR OR ASSIGNEE THAT IS
9 WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY THE ELECTRIC UTILITY
10 AND IS CREATED FOR THE LIMITED PURPOSE OF ACQUIRING, OWNING, OR
11 ADMINISTERING CO-EIA PROPERTY OR ISSUING CO-EIA BONDS AS
12 AUTHORIZED BY THE FINANCING ORDER. ALL OR ANY PORTION OF CO-EIA
13 PROPERTY MAY BE PLEDGED TO SECURE CO-EIA BONDS ISSUED PURSUANT
14 TO A FINANCING ORDER, AMOUNTS PAYABLE TO FINANCING PARTIES AND
15 TO COUNTERPARTIES UNDER ANY ANCILLARY AGREEMENTS, AND OTHER
16 FINANCING COSTS. EACH TRANSFER, SALE, CONVEYANCE, ASSIGNMENT, OR
17 PLEDGE BY AN ELECTRIC UTILITY OR AN AFFILIATE OF AN ELECTRIC
18 UTILITY IS A TRANSACTION IN THE ORDINARY COURSE OF BUSINESS.

19 (4) IF AN ELECTRIC UTILITY DEFAULTS ON ANY REQUIRED PAYMENT
20 OF CHARGES ARISING FROM CO-EIA PROPERTY DESCRIBED IN A FINANCING
21 ORDER, A COURT, UPON APPLICATION BY AN INTERESTED PARTY AND
22 WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE APPLYING
23 PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE
24 REVENUES ARISING FROM THE CO-EIA PROPERTY TO THE FINANCING
25 PARTIES. ANY SUCH FINANCING ORDER REMAINS IN FULL FORCE AND
26 EFFECT NOTWITHSTANDING ANY REORGANIZATION, BANKRUPTCY, OR
27 OTHER INSOLVENCY PROCEEDINGS WITH RESPECT TO THE ELECTRIC

1 UTILITY OR ITS SUCCESSORS OR ASSIGNEES.

2 (5) THE INTEREST OF A TRANSFEREE, PURCHASER, ACQUIRER,
3 ASSIGNEE, OR PLEDGEE IN CO-EIA PROPERTY SPECIFIED IN A FINANCING
4 ORDER ISSUED TO AN ELECTRIC UTILITY, AND IN THE REVENUE AND
5 COLLECTIONS ARISING FROM THAT PROPERTY, IS NOT SUBJECT TO SETOFF,
6 COUNTERCLAIM, SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR
7 ANY OTHER PERSON OR IN CONNECTION WITH THE REORGANIZATION,
8 BANKRUPTCY, OR OTHER INSOLVENCY OF THE ELECTRIC UTILITY OR ANY
9 OTHER ENTITY.

10 (6) A SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT
11 TO ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY
12 PROCEEDING OR WHETHER PURSUANT TO ANY MERGER OR ACQUISITION,
13 SALE, OTHER BUSINESS COMBINATION, OR TRANSFER BY OPERATION OF
14 LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR OTHERWISE,
15 MUST PERFORM AND SATISFY ALL OBLIGATIONS OF, AND HAS THE SAME
16 DUTIES AND RIGHTS UNDER A FINANCING ORDER AS THE ELECTRIC UTILITY
17 TO WHICH THE FINANCING ORDER APPLIES AND SHALL PERFORM THE
18 DUTIES AND EXERCISE THE RIGHTS IN THE SAME MANNER AND TO THE
19 SAME EXTENT AS THE ELECTRIC UTILITY, INCLUDING COLLECTING AND
20 PAYING TO ANY PERSON ENTITLED TO RECEIVE THEM THE REVENUES,
21 COLLECTIONS, PAYMENTS, OR PROCEEDS OF CO-EIA PROPERTY DESCRIBED
22 IN THE FINANCING ORDER.

23 **40-41-112. CO-EIA bonds - legal investments - not public debt**
24 **- pledge of state.** (1) BANKS, TRUST COMPANIES, SAVINGS AND LOAN
25 ASSOCIATIONS, INSURANCE COMPANIES, EXECUTORS, ADMINISTRATORS,
26 GUARDIANS, TRUSTEES, AND OTHER FIDUCIARIES MAY LEGALLY INVEST
27 ANY MONEY WITHIN THEIR CONTROL IN CO-EIA BONDS. PUBLIC ENTITIES,

1 AS DEFINED IN SECTION 24-75-601 (1), MAY INVEST PUBLIC FUNDS IN
2 CO-EIA BONDS ONLY IF THE CO-EIA BONDS SATISFY THE INVESTMENT
3 REQUIREMENTS ESTABLISHED IN PART 6 OF ARTICLE 75 OF TITLE 24.

4 (2) CO-EIA BONDS ISSUED AS AUTHORIZED BY A FINANCING
5 ORDER ARE NOT DEBT OF OR A PLEDGE OF THE FAITH AND CREDIT OR
6 TAXING POWER OF THE STATE, ANY AGENCY OF THE STATE, OR ANY
7 COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE.
8 HOLDERS OF CO-EIA BONDS HAVE NO RIGHT TO HAVE TAXES LEVIED BY
9 THE STATE OR BY ANY COUNTY, MUNICIPALITY, OR OTHER POLITICAL
10 SUBDIVISION OF THE STATE FOR THE PAYMENT OF THE PRINCIPAL OR
11 INTEREST ON CO-EIA BONDS. THE ISSUANCE OF CO-EIA BONDS DOES NOT
12 DIRECTLY, INDIRECTLY, OR CONTINGENTLY OBLIGATE THE STATE OR A
13 POLITICAL SUBDIVISION OF THE STATE TO LEVY ANY TAX OR MAKE ANY
14 APPROPRIATION FOR PAYMENT OF PRINCIPAL OR INTEREST ON THE CO-EIA
15 BONDS.

16 (3) (a) THE STATE PLEDGES TO AND AGREES WITH HOLDERS OF
17 CO-EIA BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES THAT THE
18 STATE WILL NOT:

19 (I) TAKE OR PERMIT ANY ACTION THAT IMPAIRS THE VALUE OF
20 CO-EIA PROPERTY; OR

21 (II) REDUCE, ALTER, OR IMPAIR CO-EIA CHARGES THAT ARE
22 IMPOSED, COLLECTED, AND REMITTED FOR THE BENEFIT OF HOLDERS OF
23 CO-EIA BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES, UNTIL ANY
24 PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM PAYABLE ON CO-EIA
25 BONDS, ALL FINANCING COSTS, AND ALL AMOUNTS TO BE PAID TO AN
26 ASSIGNEE OR FINANCING PARTY UNDER AN ANCILLARY AGREEMENT ARE
27 PAID IN FULL.

1 (b) A PERSON WHO ISSUES CO-EIA BONDS MAY INCLUDE THE
2 PLEDGE SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION IN THE CO-EIA
3 BONDS, ANCILLARY AGREEMENTS, AND DOCUMENTATION RELATED TO THE
4 ISSUANCE AND MARKETING OF THE CO-EIA BONDS.

5 **40-41-113. Assignee or financing party not automatically**
6 **subject to commission regulation.** AN ASSIGNEE OR FINANCING PARTY
7 THAT IS NOT ALREADY REGULATED BY THE COMMISSION DOES NOT
8 BECOME SUBJECT TO COMMISSION REGULATION SOLELY AS A RESULT OF
9 ENGAGING IN ANY TRANSACTION AUTHORIZED BY OR DESCRIBED IN THIS
10 ARTICLE 41.

11 **40-41-114. Effect of other laws and judicial decisions.** (1) IF
12 ANY PROVISION OF THIS ARTICLE 41 CONFLICTS WITH ANY OTHER LAW
13 REGARDING THE ATTACHMENT, ASSIGNMENT, PERFECTION, EFFECT OF
14 PERFECTION, OR PRIORITY OF ANY SECURITY INTEREST IN OR TRANSFER OF
15 CO-EIA PROPERTY, THE PROVISIONS OF THIS ARTICLE 41 GOVERNS TO THE
16 EXTENT OF THE CONFLICT.

17 (2) EFFECTIVE ON THE DATE THAT CO-EIA BONDS ARE FIRST
18 ISSUED, IF ANY PROVISION OF THIS ARTICLE 41 IS HELD TO BE INVALID OR
19 IS INVALIDATED, SUPERSEDED, REPLACED, REPEALED, OR EXPIRES, THAT
20 OCCURRENCE DOES NOT AFFECT ANY ACTION ALLOWED UNDER THIS
21 ARTICLE 41 THAT WAS LAWFULLY TAKEN BY THE COMMISSION, AN
22 ELECTRIC UTILITY, AN ASSIGNEE, A COLLECTION AGENT, A FINANCING
23 PARTY, A BONDHOLDER, OR A PARTY TO AN ANCILLARY AGREEMENT
24 BEFORE THE OCCURRENCE, AND ANY SUCH ACTION REMAINS IN FULL FORCE
25 AND EFFECT.

26 (3) NOTHING IN SUBSECTION (1) OR (2) OF THIS SECTION
27 PRECLUDES A UTILITY FOR WHICH THE COMMISSION HAS INITIALLY ISSUED

1 A FINANCING ORDER FROM APPLYING TO THE COMMISSION FOR:

2 (a) A SUBSEQUENT FINANCING ORDER AMENDING THE FINANCING
3 ORDER AS AUTHORIZED BY SECTION 40-41-106 (4); OR

4 (b) APPROVAL OF THE ISSUANCE OF CO-EIA BONDS TO REFUND
5 ALL OR A PORTION OF AN OUTSTANDING SERIES OF CO-EIA BONDS.

6 **40-41-115. Choice of law.** THE LAWS OF THE STATE GOVERN THE
7 VALIDITY, ENFORCEABILITY, ATTACHMENT, PERFECTION, PRIORITY, AND
8 EXERCISE OF REMEDIES WITH RESPECT TO THE TRANSFER OF AN INTEREST
9 OR RIGHT OR CREATION OF A SECURITY INTEREST IN ANY CO-EIA
10 PROPERTY, CO-EIA CHARGE, OR FINANCING ORDER.

11 **40-41-116. Security interests in CO-EIA property.** (1) THE
12 CREATION, PERFECTION, AND ENFORCEMENT OF ANY SECURITY INTEREST
13 IN CO-EIA PROPERTY TO SECURE THE REPAYMENT OF THE PRINCIPAL OF
14 AND INTEREST ON CO-EIA BONDS, AMOUNTS PAYABLE UNDER ANY
15 ANCILLARY AGREEMENT, AND OTHER FINANCING COSTS ARE GOVERNED BY
16 THIS SUBSECTION (1) AND NOT BY THE "UNIFORM COMMERCIAL CODE",
17 TITLE 4. ALL OF THE FOLLOWING APPLY:

18 (a) THE DESCRIPTION OR INDICATION OF CO-EIA PROPERTY IN A
19 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS
20 SUFFICIENT ONLY IF THE DESCRIPTION OR INDICATION REFERS TO THIS
21 ARTICLE 41 AND THE FINANCING ORDER CREATING THE CO-EIA
22 PROPERTY.

23 (b) (I) A SECURITY INTEREST IN CO-EIA PROPERTY IS CREATED,
24 VALID, AND BINDING AS SOON AS ALL OF THE FOLLOWING EVENTS HAVE
25 OCCURRED:

26 (A) THE FINANCING ORDER THAT DESCRIBES THE CO-EIA
27 PROPERTY IS ISSUED;

1 (B) A SECURITY AGREEMENT IS EXECUTED AND DELIVERED; AND

2 (C) VALUE IS RECEIVED FOR THE CO-EIA BONDS.

3 (II) ONCE A SECURITY INTEREST IN CO-EIA PROPERTY IS CREATED
4 UNDER SUBSECTION (1)(b)(I) OF THIS SECTION, THE SECURITY INTEREST
5 ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF COLLATERAL OR ANY
6 OTHER ACT. THE LIEN OF THE SECURITY INTEREST IS VALID, BINDING, AND
7 PERFECTED AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT,
8 CONTRACT OR OTHERWISE AGAINST THE PERSON GRANTING THE SECURITY
9 INTEREST, REGARDLESS OF WHETHER SUCH PARTIES HAVE NOTICE OF THE
10 LIEN, UPON THE FILING OF A FINANCING STATEMENT WITH THE SECRETARY
11 OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN A FINANCING
12 STATEMENT FILED PURSUANT TO THIS SUBSECTION (1)(b)(II) IN THE SAME
13 MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE SAME
14 RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS
15 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE
16 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION
17 (1)(b)(II) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING
18 OF FINANCING STATEMENTS.

19 (c) A SECURITY INTEREST IN CO-EIA PROPERTY IS A
20 CONTINUOUSLY PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER
21 ANY OTHER LIEN, CREATED BY OPERATION OF LAW OR OTHERWISE, WHICH
22 MAY SUBSEQUENTLY ATTACH TO THE CO-EIA PROPERTY UNLESS THE
23 HOLDER OF THE SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

24 (d) THE PRIORITY OF A SECURITY INTEREST IN CO-EIA PROPERTY
25 IS NOT AFFECTED BY THE COMMINGLING OF CO-EIA PROPERTY OR
26 CO-EIA REVENUE WITH OTHER MONEY. AN ASSIGNEE, BONDHOLDER, OR
27 FINANCING PARTY HAS A PERFECTED SECURITY INTEREST IN THE AMOUNT

1 OF ALL CO-EIA PROPERTY OR CO-EIA REVENUE THAT IS PLEDGED FOR
2 THE PAYMENT OF CO-EIA BONDS EVEN IF THE CO-EIA PROPERTY OR
3 CO-EIA REVENUE IS DEPOSITED IN A CASH OR DEPOSIT ACCOUNT OF THE
4 ELECTRIC UTILITY IN WHICH THE CO-EIA REVENUE IS COMMINGLED WITH
5 OTHER MONEY, AND ANY OTHER SECURITY INTEREST THAT APPLIES TO THE
6 OTHER MONEY DOES NOT APPLY TO THE CO-EIA REVENUE.

7 (e) NEITHER A SUBSEQUENT ORDER OF THE COMMISSION
8 AMENDING A FINANCING ORDER AS AUTHORIZED BY SECTION 40-41-106
9 (4), NOR APPLICATION OF AN ADJUSTMENT MECHANISM AS AUTHORIZED BY
10 SECTION 40-41-105 (2)(g), AFFECTS THE VALIDITY, PERFECTION, OR
11 PRIORITY OF A SECURITY INTEREST IN OR TRANSFER OF CO-EIA PROPERTY.

12 **40-41-117. Sales of CO-EIA property.** (1) (a) A SALE,
13 ASSIGNMENT, OR TRANSFER OF CO-EIA PROPERTY IS AN ABSOLUTE
14 TRANSFER AND TRUE SALE OF, AND NOT A PLEDGE OF OR SECURED
15 TRANSACTION RELATING TO, THE SELLER'S RIGHT, TITLE AND INTEREST IN,
16 TO, AND UNDER THE CO-EIA PROPERTY IF THE DOCUMENTS GOVERNING
17 THE TRANSACTION EXPRESSLY STATE THAT THE TRANSACTION IS A SALE
18 OR OTHER ABSOLUTE TRANSFER. A TRANSFER OF AN INTEREST IN CO-EIA
19 PROPERTY MAY BE CREATED ONLY WHEN ALL OF THE FOLLOWING HAVE
20 OCCURRED:

21 (I) THE FINANCING ORDER CREATING AND DESCRIBING THE
22 CO-EIA PROPERTY HAS BECOME EFFECTIVE;

23 (II) THE DOCUMENTS EVIDENCING THE TRANSFER OF THE CO-EIA
24 PROPERTY HAVE BEEN EXECUTED AND DELIVERED TO THE ASSIGNEE; AND

25 (III) VALUE IS RECEIVED.

26 (b) UPON THE FILING OF A FINANCING STATEMENT WITH THE
27 SECRETARY OF STATE, A TRANSFER OF AN INTEREST IN CO-EIA PROPERTY

1 IS PERFECTED AGAINST ALL THIRD PERSONS, INCLUDING ANY JUDICIAL LIEN
2 OR OTHER LIEN CREDITORS OR ANY CLAIMS OF THE SELLER OR CREDITORS
3 OF THE SELLER, OTHER THAN CREDITORS HOLDING A PRIOR SECURITY
4 INTEREST, OWNERSHIP INTEREST, OR ASSIGNMENT IN THE CO-EIA
5 PROPERTY PREVIOUSLY PERFECTED IN ACCORDANCE WITH THIS
6 SUBSECTION (1) OR SECTION 40-41-116. THE SECRETARY OF STATE SHALL
7 MAINTAIN A FINANCING STATEMENT FILED PURSUANT TO THIS SUBSECTION
8 (1)(b) IN THE SAME MANNER IN WHICH THE SECRETARY MAINTAINS AND IN
9 THE SAME RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS
10 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE
11 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION
12 (1)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF
13 FINANCING STATEMENTS.

14 (2) THE CHARACTERIZATION OF A SALE, ASSIGNMENT, OR
15 TRANSFER AS AN ABSOLUTE TRANSFER AND TRUE SALE AND THE
16 CORRESPONDING CHARACTERIZATION OF THE PROPERTY INTEREST OF THE
17 ASSIGNEE IS NOT AFFECTED OR IMPAIRED BY THE EXISTENCE OR
18 OCCURRENCE OF ANY OF THE FOLLOWING:

19 (a) COMMINGLING OF CO-EIA REVENUE WITH OTHER MONEY;

20 (b) THE RETENTION BY THE SELLER OF:

21 (I) A PARTIAL OR RESIDUAL INTEREST, INCLUDING AN EQUITY
22 INTEREST, IN THE CO-EIA PROPERTY, WHETHER DIRECT OR INDIRECT, OR
23 WHETHER SUBORDINATE OR OTHERWISE; OR

24 (II) THE RIGHT TO RECOVER COSTS ASSOCIATED WITH TAXES,
25 FRANCHISE FEES, OR LICENSE FEES IMPOSED ON THE COLLECTION OF
26 CO-EIA REVENUE;

27 (c) ANY RECOURSE THAT THE PURCHASER MAY HAVE AGAINST THE

1 SELLER;

2 (d) ANY INDEMNIFICATION RIGHTS, OBLIGATIONS, OR REPURCHASE
3 RIGHTS MADE OR PROVIDED BY THE SELLER;

4 (e) AN OBLIGATION OF THE SELLER TO COLLECT CO-EIA
5 REVENUES ON BEHALF OF AN ASSIGNEE;

6 (f) THE TREATMENT OF THE SALE, ASSIGNMENT, OR TRANSFER FOR
7 TAX, FINANCIAL REPORTING, OR OTHER PURPOSES;

8 (g) ANY SUBSEQUENT FINANCING ORDER AMENDING A FINANCING
9 ORDER AS AUTHORIZED BY SECTION 40-41-106 (4); OR

10 (h) ANY APPLICATION OF AN ADJUSTMENT MECHANISM AS
11 AUTHORIZED BY SECTION 40-41-105 (2)(g).

12 **40-41-118. Use of CO-EIA bond proceeds by an electric utility**

13 - **definition.** (1) FOR PURPOSES OF THIS SECTION, "LEAST-COST
14 GENERATION RESOURCE" MEANS AN INCREMENTAL SUPPLY-SIDE OR
15 DEMAND-SIDE RESOURCE THAT WHEN INCLUDED IN AN ELECTRIC UTILITY'S
16 GENERATION PORTFOLIO PRODUCES THE LOWEST COST AMONG
17 ALTERNATIVE RESOURCES, CONSIDERING BOTH SHORT-TERM AND
18 LONG-TERM COSTS AND ASSESSING THE LIKELIHOOD OF CHANGES IN
19 FUTURE FUEL PRICES AND FUTURE ENVIRONMENTAL REQUIREMENTS,
20 AMONG OTHER CONSIDERATIONS.

21 (2) SUBJECT TO COMMISSION APPROVAL AS REQUIRED BY
22 SUBSECTION (3) OF THIS SECTION, AN ELECTRIC UTILITY MAY EXPEND OR
23 INVEST CO-EIA BOND PROCEEDS, OTHER THAN BOND PROCEEDS REQUIRED
24 BY A FINANCING ORDER TO BE TRANSFERRED TO THE AUTHORITY, IN A
25 MANNER THAT DEMONSTRABLY BENEFITS RATEPAYER INTERESTS, AS
26 FOLLOWS:

27 (a) TO PURCHASE POWER TO REPLACE ELECTRICITY GENERATED BY

1 THE ELECTRIC GENERATING FACILITIES THAT WERE RETIRED IF THE
2 COMMISSION DETERMINES THAT THE PURCHASED POWER IS A LEAST-COST
3 GENERATION RESOURCE AND IS CONSISTENT WITH THE ELECTRIC UTILITY'S
4 APPROVED INTEGRATED RESOURCE PLAN;

5 (b) TO BUILD AND OWN GENERATION FACILITIES THAT ARE
6 LEAST-COST GENERATION RESOURCES, THE ADDITION OF WHICH IS NOT
7 INCONSISTENT WITH THE ELECTRIC UTILITY'S APPROVED INTEGRATED
8 RESOURCE PLAN;

9 (c) TO BUILD, OWN, OR PURCHASE ELECTRICITY STORAGE
10 CAPACITY TO THE EXTENT THAT SUCH INVESTMENT IS EITHER REQUIRED
11 BY LAW OR RULE OR IS NEEDED TO INCREASE THE AMOUNT OF LEAST-COST
12 GENERATION RESOURCES THAT THE ELECTRIC UTILITY IS ABLE TO ADD TO
13 ITS GENERATION PORTFOLIO; AND

14 (d) TO INVEST IN NETWORK MODERNIZATION TO THE EXTENT THAT
15 THE MODERNIZATION IS NECESSARY TO INCREASE THE AMOUNT OF
16 LEAST-COST GENERATION RESOURCES ABLE TO BE ADDED TO THE
17 ELECTRIC UTILITY'S SYSTEM; EXCEPT THAT PROCEEDS MAY NOT BE USED
18 FOR NEW TRANSMISSION FACILITIES.

19 (3) IN CONSIDERING ANY APPLICATION FOR APPROVAL OF THE USE
20 OF CO-EIA BOND PROCEEDS, THE COMMISSION SHALL:

21 (a) USE ITS REGULAR PROCESS FOR CONSIDERATION OF
22 APPLICATIONS; AND

23 (b) FULLY CONSIDER THE PROVISIONS OF SECTION 40-2-123
24 CONCERNING NEW ENERGY TECHNOLOGIES AND FUTURE ENVIRONMENTAL
25 REGULATIONS.

26 PART 2

27 COLORADO ENERGY IMPACT ASSISTANCE AUTHORITY

1 **40-41-201. Colorado energy impact assistance authority -**
2 **creation - board - general powers and duties.** (1) THE COLORADO
3 ENERGY IMPACT ASSISTANCE AUTHORITY IS HEREBY CREATED. THE
4 AUTHORITY IS AN INDEPENDENT PUBLIC BODY POLITIC AND CORPORATE,
5 IS NOT AN AGENCY OF STATE GOVERNMENT, AND IS NOT SUBJECT TO
6 ADMINISTRATIVE DIRECTION BY ANY DEPARTMENT, COMMISSION, BOARD,
7 OR AGENCY OF THE STATE. THE AUTHORITY IS A PUBLIC
8 INSTRUMENTALITY, AND ITS EXERCISE OF ITS POWERS AND EXECUTION OF
9 THE DUTIES AS SPECIFIED IN THIS ARTICLE 41 IS THE PERFORMANCE OF AN
10 ESSENTIAL PUBLIC FUNCTION.

11 (2) (a) THE AUTHORITY IS GOVERNED BY A BOARD OF DIRECTORS,
12 WHICH CONSISTS OF SEVEN DIRECTORS APPOINTED BY THE GOVERNOR AS
13 FOLLOWS:

14 (I) ONE DIRECTOR WHO HAS PROFESSIONAL JOB TRAINING
15 EXPERIENCE;

16 (II) ONE DIRECTOR WHO HAS PROFESSIONAL EXPERIENCE IN RURAL
17 ECONOMIC DEVELOPMENT; AND

18 (III) FIVE MEMBERS APPOINTED WITHOUT OCCUPATIONAL
19 REQUIREMENTS, BUT THE GOVERNOR SHALL STRONGLY CONSIDER
20 APPOINTING A DIRECTOR WHO IS LICENSED TO PRACTICE LAW IN
21 COLORADO, A DIRECTOR WHO HAS PROFESSIONAL FINANCE EXPERIENCE,
22 AND AT LEAST ONE DIRECTOR WHO RESIDES IN AN AREA DIRECTLY
23 IMPACTED BY THE RETIREMENT OF ONE OR MORE ELECTRIC GENERATING
24 FACILITIES.

25 (b) THE GOVERNOR SHALL APPOINT THE INITIAL DIRECTORS OF THE
26 BOARD FOR TERMS BEGINNING JULY 1, 2017. DIRECTORS SERVE FOR
27 FIVE-YEAR TERMS; EXCEPT THAT TWO OF THE DIRECTORS SHALL SERVE

1 INITIAL TERMS OF THREE YEARS. THE GOVERNOR MAY REMOVE A
2 DIRECTOR FOR MISFEASANCE, MALFEASANCE, WILLFUL NEGLECT OF DUTY,
3 OR OTHER CAUSE AFTER NOTICE AND A PUBLIC HEARING UNLESS THE
4 DIRECTOR BEING REMOVED EXPRESSLY WAIVES IN WRITING HIS OR HER
5 RIGHT TO NOTICE AND A PUBLIC HEARING. THE GOVERNOR SHALL FILL ANY
6 VACANCY ON THE BOARD BY THE APPOINTMENT OF A NEW DIRECTOR FOR
7 THE REMAINDER OF THE UNEXPIRED TERM OF THE DIRECTOR WHOSE
8 DEPARTURE CAUSED THE VACANCY.

9 (c) DIRECTORS OF THE BOARD SERVE WITHOUT COMPENSATION
10 BUT ARE ENTITLED TO REIMBURSEMENT FOR ALL NECESSARY EXPENSES
11 INCURRED IN THE PERFORMANCE OF THEIR DUTIES UNDER THIS ARTICLE 41.
12 REIMBURSEMENT OF DIRECTORS MUST BE PAID BY THE AUTHORITY.

13 (3) THE PURPOSE AND MISSION OF THE AUTHORITY IS TO EXPEND
14 MONEY RECEIVED FROM ELECTRIC UTILITIES THAT ARE ISSUING CO-EIA
15 BONDS AS AUTHORIZED BY FINANCING ORDERS AND FROM OTHER SOURCES
16 FOR THE PURPOSE OF MITIGATING DIRECT IMPACTS TO COLORADO
17 WORKERS AND COMMUNITIES RESULTING FROM THE RETIREMENT OF
18 ELECTRIC GENERATING FACILITIES. IN FURTHERANCE OF ITS MISSION, AND
19 IN ADDITION TO ANY OTHER POWERS AND DUTIES GRANTED TO THE
20 AUTHORITY BY THIS ARTICLE 41, THE AUTHORITY HAS THE FOLLOWING
21 GENERAL POWERS:

22 (a) TO HAVE THE DUTIES, PRIVILEGES, IMMUNITIES, RIGHTS,
23 LIABILITIES, AND DISABILITIES OF A BODY CORPORATE AND POLITICAL
24 SUBDIVISION OF THE STATE;

25 (b) TO HAVE PERPETUAL EXISTENCE AND SUCCESSION;

26 (c) TO ADOPT, HAVE, AND USE A SEAL AND TO ALTER THE SAME AT
27 ITS PLEASURE;

1 (d) TO ADOPT RULES, BYLAWS, ORDERS, AND RESOLUTIONS
2 NECESSARY FOR THE REGULATION OF ITS AFFAIRS, THE CONDUCT OF ITS
3 BUSINESS, THE EXERCISE OF ITS POWERS, AND THE FULFILLMENT OF ITS
4 DUTIES AND MISSION AS SPECIFIED IN THIS ARTICLE 41;

5 (e) TO FIX THE TIME AND PLACE OF BOARD MEETINGS, WHICH MUST
6 BE HELD AT LEAST FOUR TIMES PER YEAR AND, CONSISTENT WITH PART 4
7 OF ARTICLE 6 OF TITLE 24, THE METHOD OF PROVIDING NOTICE OF BOARD
8 MEETINGS. AT LEAST ONE BOARD MEETING PER YEAR MUST BE HELD
9 IN-PERSON, AND OTHER MEETINGS MAY BE HELD USING AUDIO OR VIDEO
10 TELECOMMUNICATIONS TECHNOLOGY.

11 (f) TO PAY ITS REASONABLE AND NECESSARY ADMINISTRATIVE
12 AND OPERATING COSTS FROM ANY REVENUE THAT IT RECEIVES;

13 (g) TO SUE AND BE SUED;

14 (h) TO APPOINT, HIRE, RETAIN, AND TERMINATE OFFICERS AND
15 EMPLOYEES AND CONTRACT WITH AGENTS, ATTORNEYS, ACCOUNTANTS,
16 AUDITORS, FINANCIAL ADVISERS, INVESTMENT BANKERS, AND OTHER
17 PROFESSIONAL CONSULTANTS TO THE EXTENT NEEDED TO EXERCISE ITS
18 POWERS AND PERFORM ITS DUTIES UNDER THIS ARTICLE 41;

19 (i) TO ENTER INTO CONTRACTS AND AGREEMENTS, INCLUDING
20 MEMORANDUMS OF UNDERSTANDING OR INTERGOVERNMENTAL
21 AGREEMENTS WITH ONE OR MORE AGENCIES OR POLITICAL SUBDIVISIONS
22 OF THE STATE OR ANOTHER STATE OR WITH THE FEDERAL GOVERNMENT,
23 NOT INCONSISTENT WITH THIS ARTICLE 41 OR ANY OTHER LAWS OF THE
24 STATE. THE AUTHORITY MAY ENTER INTO A CONTRACT OR AGREEMENT
25 WITH AN APPROPRIATE STATE AGENCY TO HELP THE AUTHORITY
26 ADMINISTER THE DISTRIBUTION OF ITS MONEY AS TRANSITION ASSISTANCE,
27 AND, IF IT DOES SO, THE MONEY ADMINISTERED REMAINS MONEY OF THE

1 AUTHORITY UNTIL IT IS DISTRIBUTED AND IS NOT MONEY OR REVENUE OF
2 THE STATE.

3 (j) TO ACQUIRE SPACE, INCLUDING OFFICE SPACE, EQUIPMENT,
4 SERVICES, SUPPLIES, AND INSURANCE NECESSARY TO EXECUTE ITS
5 POWERS, DUTIES, AND MISSION UNDER THIS ARTICLE 41;

6 (k) TO DEPOSIT ITS MONEY IN ANY BANKING INSTITUTION WITHIN
7 THE STATE OR IN ANY DEPOSITORY AUTHORIZED IN SECTION 24-75-603, TO
8 APPOINT, FOR THE PURPOSE OF MAKING SUCH DEPOSITS, ONE OR MORE
9 PERSONS, WHO SHALL GIVE SURETY BONDS IN SUCH AMOUNTS AND FORM
10 AND FOR SUCH PURPOSES AS THE BOARD REQUIRES, TO ACT AS
11 CUSTODIANS OF ITS MONEY, AND TO OTHERWISE DEPOSIT AND INVEST ITS
12 MONEY AS PERMITTED BY PART 6 OF ARTICLE 75 OF TITLE 24; AND

13 (l) TO HAVE AND EXERCISE ANY OTHER POWERS NECESSARY OR
14 INCIDENTAL TO OR IMPLIED FROM THE SPECIFIC POWERS AND DUTIES
15 GRANTED IN THIS SECTION.

16 **40-41-202. Mitigation of impacts - specific powers and duties**
17 **of authority - local advisory committees.** (1) IN ORDER TO MITIGATE
18 THE DIRECT IMPACTS TO COLORADO WORKERS AND LOCAL COMMUNITIES
19 RESULTING FROM THE RETIREMENT OF ELECTRIC GENERATING FACILITIES,
20 THE AUTHORITY HAS THE FOLLOWING SPECIFIC POWERS AND DUTIES:

21 (a) TO DETERMINE THE DIRECT IMPACTS THAT THE RETIREMENT OF
22 AN ELECTRIC GENERATING FACILITY OWNED BY AN INVESTOR-OWNED
23 UTILITY WILL HAVE ON COLORADO WORKERS AND COMMUNITIES AND TO
24 CONSULT WITH THE DEPARTMENT OF LOCAL AFFAIRS, LOCAL
25 GOVERNMENTS, ELECTRIC UTILITIES, LABOR UNIONS, AND ANY OTHER
26 PERSONS WHO POSSESS RELEVANT INFORMATION IN MAKING ANY SUCH
27 DETERMINATION;

1 (b) TO RECEIVE PAYMENTS FROM ELECTRIC UTILITIES REQUIRED TO
2 MAKE PAYMENTS TO THE AUTHORITY PURSUANT TO THE PROVISIONS OF A
3 FINANCING ORDER AND MAINTAIN A BALANCING ACCOUNT TO HOLD ANY
4 EXCESS MONEY NOT NEEDED IN THE SHORT RUN THAT HAS SEPARATE
5 SUBACCOUNTS FOR EACH ELECTRIC UTILITY THAT MAKES PAYMENTS TO
6 THE AUTHORITY; AND

7 (c) (I) TO PROVIDE TRANSITION ASSISTANCE, WHICH THE
8 AUTHORITY MAY EITHER PROVIDE DIRECTLY OR, EXCEPT AS OTHERWISE
9 PROVIDED IN SUBSECTION (1)(c)(II) OF THIS SECTION, MAY PROVIDE
10 INDIRECTLY BY DISBURSING MONEY TO THE DEPARTMENT OF LOCAL
11 AFFAIRS, TO ANY LOCAL GOVERNMENT OR AGENCY OF LOCAL
12 GOVERNMENT, TO ANY NONPROFIT CORPORATION OR EDUCATIONAL
13 INSTITUTION, TO ANY FOR-PROFIT CORPORATION, TO ANY COMMUNITY
14 DEVELOPMENT AGENCY, OR TO ANY ELIGIBLE APPLICANT, AS DEFINED IN
15 SECTION 8-83-303 (4), FOR ITS USE IN MITIGATING DIRECT IMPACTS TO
16 WORKERS AND LOCAL COMMUNITIES RESULTING FROM THE RETIREMENT
17 OF ELECTRIC GENERATING FACILITIES.

18 (II) THE AUTHORITY SHALL NOT DISBURSE MONEY AS TRANSITION
19 ASSISTANCE TO THE DEPARTMENT OF LOCAL AFFAIRS OR A LOCAL
20 GOVERNMENT OR AGENCY OF LOCAL GOVERNMENT IF THE RECEIPT OF THE
21 MONEY WOULD TRIGGER OR INCREASE THE AMOUNT OF ANY REFUND OF
22 EXCESS STATE OR LOCAL GOVERNMENT REVENUE REQUIRED BY SECTION
23 20 OF ARTICLE X OF THE STATE CONSTITUTION, BUT MAY COMPENSATE
24 THE DEPARTMENT OR A LOCAL GOVERNMENT OR AGENCY OF LOCAL
25 GOVERNMENT FOR SERVICES CONTRACTED FOR PURSUANT TO SECTION
26 40-41-201 (3)(i).

27 (2) WHEN DETERMINING HOW BEST TO ADDRESS THE DIRECT

1 IMPACTS TO A LOCAL COMMUNITY RESULTING FROM THE RETIREMENT OF
2 ELECTRIC GENERATING FACILITIES AND PROVIDE TRANSITION ASSISTANCE,
3 THE AUTHORITY SHALL TAKE INTO CONSIDERATION THE ADVICE OF A
4 LOCAL ADVISORY COMMITTEE, WHICH THE AUTHORITY SHALL ESTABLISH
5 IN CONJUNCTION WITH EACH BOARD OF COUNTY COMMISSIONERS,
6 MUNICIPAL GOVERNING BODY, AND SCHOOL DISTRICT THAT INCLUDES ALL
7 OR A PORTION OF THE IMPACTED COMMUNITY. A LOCAL ADVISORY
8 COMMITTEE:

9 (a) CONSISTS OF ONE MEMBER APPOINTED BY EACH PARTICIPATING
10 BOARD OF COUNTY COMMISSIONERS, MUNICIPAL GOVERNING BODY, AND
11 SCHOOL DISTRICT;

12 (b) SHALL ADVISE THE AUTHORITY WITH RESPECT TO THE NATURE
13 AND SCOPE OF THE DIRECT IMPACTS TO THE COMMUNITY RESULTING FROM
14 THE RETIREMENT OF AN ELECTRIC GENERATING FACILITY AND THE
15 DEVELOPMENT OF A TRANSITION ASSISTANCE PLAN FOR THE COMMUNITY;
16 AND

17 (c) MAY EITHER BE DISSOLVED BY THE AUTHORITY WHEN THE
18 TRANSITION ASSISTANCE IS COMPLETED OR MAINTAINED TO ADVISE THE
19 AUTHORITY REGARDING THE IMPLEMENTATION OF THE TRANSITION
20 ASSISTANCE.

21 **40-41-203. Voluntary contributions to authority by utilities.**

22 (1) UPON THE RETIREMENT OF AN ELECTRIC GENERATING FACILITY, A
23 COLORADO ELECTRIC UTILITY MAY, AT ITS SOLE DISCRETION, TRANSFER
24 TO THE AUTHORITY AN AMOUNT OF UP TO FIFTEEN PERCENT OF THE NET
25 PRESENT VALUE OF OPERATIONAL SAVINGS CREATED BY THE RETIREMENT
26 OF THE ELECTRIC GENERATING FACILITY, WHETHER OR NOT THE UTILITY
27 HAS OBTAINED A FINANCING ORDER AND ISSUED CO-EIA BONDS IN

1 CONNECTION WITH THE RETIREMENT OF THE ELECTRIC GENERATING
2 FACILITY. A DECISION BY A COLORADO ELECTRIC UTILITY TO TRANSFER A
3 PERCENTAGE OF THE NET PRESENT VALUE OF OPERATING SAVINGS TO THE
4 AUTHORITY SHALL BE DEEMED BY THE COMMISSION TO BE A PRUDENT
5 ACTION BY THE UTILITY.

6 (2) FOR PURPOSES OF THIS SECTION, THE NET PRESENT VALUE OF
7 OPERATIONAL SAVINGS CREATED BY THE RETIREMENT OF AN ELECTRIC
8 GENERATING FACILITY IS THE NET PRESENT VALUE OF THE ANNUAL
9 DIFFERENCES BETWEEN THE ESTIMATED COST TO RATEPAYERS OF THE
10 CONTINUED OPERATION OF THE ELECTRIC GENERATING FACILITY MINUS
11 THE ESTIMATED COST OF ENERGY GENERATED OR PURCHASED TO REPLACE
12 THE ENERGY PREVIOUSLY GENERATED BY THE FACILITY.

13 **40-41-204. Reporting to general assembly.** NOTWITHSTANDING
14 THE PROVISIONS OF SECTION 24-1-136 (11), FOR ANY FISCAL YEAR IN
15 WHICH THE AUTHORITY HAS PROVIDED TRANSITION ASSISTANCE, THE
16 AUTHORITY, NO LATER THAN FEBRUARY 15 OF THE FOLLOWING FISCAL
17 YEAR, SHALL SUBMIT TO THE FINANCE COMMITTEES OF THE HOUSE OF
18 REPRESENTATIVES AND THE SENATE, THE TRANSPORTATION AND ENERGY
19 COMMITTEE OF THE HOUSE OF REPRESENTATIVES, AND THE AGRICULTURE,
20 NATURAL RESOURCES, AND ENERGY COMMITTEE OF THE SENATE, OR ANY
21 SUCCESSOR COMMITTEES, A REPORT THAT SETS FORTH A COMPLETE AND
22 DETAILED FINANCIAL AND OPERATING STATEMENT OF THE AUTHORITY
23 DURING THE FISCAL YEAR.

24 **40-41-205. Authority subject to open meetings and open**
25 **records laws.** THE AUTHORITY IS SUBJECT TO THE OPEN MEETINGS
26 PROVISIONS OF PART 4 OF ARTICLE 6 OF TITLE 24 AND THE "COLORADO
27 OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

1 **SECTION 2.** In Colorado Revised Statutes, 24-77-102, **amend**
2 the introductory portion; and **add** (15)(b)(XIX) as follows:

3 **24-77-102. Definitions.** As used in this ~~article~~ ARTICLE 77, unless
4 the context otherwise requires:

5 (15)(b) "Special purpose authority" includes, but is not limited to:
6 (XIX) THE COLORADO ENERGY IMPACT ASSISTANCE AUTHORITY
7 CREATED PURSUANT TO SECTION 40-41-201 (1).

8 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.

CHAPTER 2015-129

Committee Substitute for House Bill No. 7109

An act relating to the Florida Public Service Commission; amending s. 350.01, F.S.; providing term limits for commissioners appointed after a specified date; requiring that specified meetings, workshops, hearings, or proceedings of the commission be streamed live and recorded copies be made available on the commission's website; amending s. 350.031, F.S.; requiring a person who lobbies a member of the Florida Public Service Commission Nominating Council to register as a lobbyist; requiring implementation by joint rule; amending s. 350.041, F.S.; requiring public service commissioners to annually complete ethics training; amending s. 350.042, F.S.; revising the prohibition against ex parte communications to include any matter that a commissioner knows or reasonably expects will be filed within a certain timeframe; providing legislative intent; defining terms; applying the prohibition against ex parte communications to specified meetings; specifying conditions under which the Governor must remove from office any commissioner found to have willfully and knowingly violated the ex parte communications law; amending s. 366.05, F.S.; limiting the use of tiered rates in conjunction with extended billing periods; limiting deposit amounts; requiring a utility to notify each customer if it has more than one rate for any customer class; requiring the utility to provide good faith assistance to the customer in determining the best rate; assigning responsibility to the customer for the rate selection; requiring the commission to approve new tariffs and certain changes to existing tariffs; amending s. 366.82, F.S.; requiring that money received by a utility for the development of demand-side renewable energy systems be used solely for that purpose; creating s. 366.95, F.S.; defining terms; authorizing electric utilities to petition the commission for certain financing orders that authorize the issuance of nuclear asset-recovery bonds, authorize the imposition, collection, and periodic adjustments of nuclear asset-recovery charges, and authorize the creation of nuclear asset-recovery property; providing requirements; providing exceptions to the commission's jurisdiction for certain aspects of financing orders; specifying duties of electric utilities that have obtained a financing order and issued nuclear asset-recovery bonds; specifying properties, requirements, and limitations relating to nuclear asset-recovery property; providing requirements as to the sufficiency of the description of certain nuclear asset-recovery property; subjecting financing statements to the Uniform Commercial Code; providing an exception; specifying that nuclear asset-recovery bonds are not public debt; specifying certain state pledges relating to bondholders; declaring that certain entities are not electric utilities under certain circumstances; specifying effect of certain provisions in situations of conflict; providing for protecting validity of certain bonds under certain circumstances; providing penalties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 350.01, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.—

(3) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council no later than June 1 prior to the year in which his or her term expires a statement that he or she desires to serve an additional term. A commissioner appointed after July 1, 2015, may not serve more than three consecutive terms.

(8) Each meeting, including each internal affairs meeting, workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or other proceeding where a decision that concerns the rights or obligations of any person is made, shall be streamed live on the Internet and a recorded copy of the meeting, workshop, hearing, or proceeding shall be made available on the commission's website.

Section 2. Subsection (10) is added to section 350.031, Florida Statutes, to read:

350.031 Florida Public Service Commission Nominating Council.—

(10) In keeping with the purpose of the council, which is to select nominees to be appointed to an arm of the legislative branch of government, a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose, must register as a lobbyist pursuant to s. 11.045 and otherwise comply with the requirements of that section. The Legislature shall implement this subsection by joint rule.

Section 3. Subsection (3) of section 350.041, Florida Statutes, is renumbered as subsection(4), and a new subsection (3) is added to that section to read:

350.041 Commissioners; standards of conduct.—

(3) ETHICS TRAINING.—Beginning January 1, 2016, a commissioner must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

Section 4. Subsections (1) and (3) and paragraph (b) of subsection (7) of section 350.042, Florida Statutes, are amended to read:

350.042 Ex parte communications.—

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding under s. 120.569 or s. 120.57 that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication, other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. An ~~No~~ individual may not ~~shall~~ discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 ~~90~~ days. ~~The provisions of~~ This subsection ~~does~~ shall not apply to commission staff.

(3)(a) The Legislature finds that it is important to have commissioners who are educated and informed on regulatory policies and developments in science, technology, business management, finance, law, and public policy which are associated with the industries that the commissioners regulate. The Legislature also finds that it is in the public interest for commissioners to become educated and informed on these matters through active participation in meetings that are scheduled by organizations that sponsor such educational or informational sessions, programs, conferences, and similar events and that are duly noticed and open to the public.

(b) As used in this subsection, the term "active participation" or "participating in" includes, but is not limited to, attending or speaking at educational sessions, participating in organization governance by attending meetings, serving on committees or in leadership positions, participating in panel discussions, and attending meals and receptions associated with such events that are open to all attendees.

(c) The prohibition in subsection (1) remains in effect at all times at such meetings wherever located. While participating in such meetings, a commissioner shall:

1. Refrain from commenting on or discussing any proceeding under s. 120.569 or s. 120.57 which is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting.

2. Use reasonable care to ensure that the content of the educational session or other session in which the commissioner participates is not designed to address or create a forum to influence the commissioner on any proceeding under s. 120.569 or s. 120.57 which is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting ~~This section shall not~~

~~apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.~~

(7)

(b) If the Commission on Ethics finds that there has been a violation of this section by a public service commissioner, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this section. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this section after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this section in a separate matter.

Section 5. Subsection (1) of section 366.05, Florida Statutes, is amended to read:

366.05 Powers.—

(1)(a) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(b) If the commission authorizes a public utility to charge tiered rates based upon levels of usage and to vary its regular billing period, the utility may not charge a customer a higher rate because of an increase in usage attributable to an extension of the billing period; however, the regular meter reading date may not be advanced or postponed more than 5 days for routine operating reasons without prorating the billing for the period.

(c) Effective January 1, 2016, a utility may not charge or receive a deposit in excess of the following amounts:

1. For an existing account, the total deposit may not exceed 2 months of average actual charges, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by 2. If the account has less than 12 months of actual charges, the deposit shall be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by 2.

2. For a new service request, the total deposit may not exceed 2 months of projected charges, calculated by adding the 12 months of projected charges, dividing this total by 12, and multiplying the result by 2. Once a new customer has had continuous service for a 12-month period, the amount of the deposit shall be recalculated using actual data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

(d) If a utility has more than one rate for any customer class, it must notify each customer in that class of the available rates and explain how the rate is charged to the customer. If a customer contacts the utility seeking assistance in selecting the most advantageous rate, the utility must provide good faith assistance to the customer. The customer is responsible for charges for service provided under the selected rate.

(e) New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by majority vote of the commission, except as otherwise specifically provided by law.

Section 6. Subsection (2) of section 366.82, Florida Statutes, is amended to read:

366.82 Definition; goals; plans; programs; annual reports; energy audits.

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources. The commission may allow efficiency investments across generation, transmission, and distribution as well as efficiencies within the user base. Moneys received by a utility to implement measures to encourage the development of demand-side renewable energy systems shall be used solely for such purposes and related administrative costs.

Section 7. Section 366.95, Florida Statutes, is created to read:

366.95 Financing for certain nuclear generating asset retirement or abandonment costs.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Ancillary agreement” means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with nuclear asset-recovery bonds.

(b) “Assignee” means any entity, including, but not limited to, a corporation, limited liability company, partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to nuclear asset-recovery property. The term also includes any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to nuclear asset-recovery property.

(c) “Commission” means the Florida Public Service Commission.

(d) “Electric utility” or “utility” has the same meaning as provided in s. 366.8255.

(e) “Financing costs” means:

1. Interest and acquisition, defeasance, or redemption premiums payable on nuclear asset-recovery bonds;

2. Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to nuclear asset-recovery bonds;

3. Any other cost related to issuing, supporting, repaying, refunding, and servicing nuclear asset-recovery bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of nuclear asset-recovery bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order;

4. Any taxes and license fees imposed on the revenues generated from the collection of the nuclear asset-recovery charge;

5. Any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including, but not limited to, regulatory assessment fees, in any such case whether paid, payable, or accrued; and

6. Any costs incurred by the commission for any outside consultants or counsel pursuant to subparagraph (2)(c)2.

(f) “Financing order” means an order that authorizes the issuance of nuclear asset-recovery bonds; the imposition, collection, and periodic adjustments of the nuclear asset-recovery charge; and the creation of nuclear asset-recovery property.

(g) “Financing party” means any and all of the following: holders of nuclear asset-recovery bonds and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of holders of nuclear asset-recovery bonds.

(h) “Financing statement” has the same meaning as provided in Article 9 of the Uniform Commercial Code.

(i) “Nuclear asset-recovery bonds” means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that are issued by an electric utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance commission-approved nuclear asset-recovery costs and financing costs, and that are secured by or payable from nuclear asset-recovery property. If certificates of participation or ownership are issued, references in this section to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.

(j) “Nuclear asset-recovery charge” means the amounts authorized by the commission to repay, finance, or refinance nuclear asset-recovery costs and financing costs. If determined appropriate by the commission and provided for in a financing order, such amounts are to be imposed on and be a part of all customer bills and be collected by an electric utility or its successors or assignees, or a collection agent, in full through a nonbypassable charge that is separate and apart from the electric utility’s base rates, which charge shall be paid by all existing or future customers receiving transmission or distribution service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state.

(k) “Nuclear asset-recovery costs” means:

1. At the option of and upon petition by the electric utility, and as approved by the commission pursuant to sub-subparagraph (2)(c)1.b., pretax costs that an electric utility has incurred or expects to incur which are caused

by, associated with, or remain as a result of the early retirement or abandonment of a nuclear generating asset unit that generated electricity and is located in this state where such early retirement or abandonment is deemed to be reasonable and prudent by the commission through a final order approving a settlement or other final order issued by the commission before July 1, 2017, and where the pretax costs to be securitized exceed \$750 million at the time of the filing of the petition. Costs eligible or claimed for recovery pursuant to s. 366.93 are not eligible for securitization under this section unless they were in the electric utility's rate base and were included in base rates before retirement or abandonment.

2. Such pretax costs, where determined appropriate by the commission, include, but are not limited to, the capitalized cost of the retired or abandoned nuclear generating asset unit, other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds and previously stipulated write-downs or write-offs, if any, and the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

(l) "Nuclear asset-recovery property" means:

1. All rights and interests of an electric utility or successor or assignee of the electric utility under a financing order, including the right to impose, bill, collect, and receive nuclear asset-recovery charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order; or

2. All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subparagraph 1., regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

(m) "Pledgee" means a financing party to which an electric utility or its successors or assignees mortgages, negotiates, hypothecates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to nuclear asset-recovery property.

(n) "Uniform Commercial Code" has the same meaning as provided in chapters 670-680.

(2) FINANCING ORDERS.—

(a) An electric utility may petition the commission for a financing order. For each petition, the electric utility shall:

1. Describe the nuclear asset-recovery costs;

2. Indicate whether the utility proposes to finance all or a portion of the nuclear asset-recovery costs using nuclear asset-recovery bonds. If the utility proposes to finance a portion of such costs, the utility must identify the specific portion in the petition;

3. Estimate the financing costs related to the nuclear asset-recovery bonds;

4. Estimate the nuclear asset-recovery charges necessary to recover the nuclear asset-recovery costs and financing costs and the period for recovery of such costs;

5. Estimate any projected cost savings, based on current market conditions, or demonstrate how the issuance of nuclear asset-recovery bonds and the imposition of nuclear asset-recovery charges would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs from customers;

6. Demonstrate that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to the traditional method of cost recovery; and

7. File direct testimony supporting the petition.

(b) If an electric utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in nuclear asset-recovery costs, the electric utility must file a petition, or have filed a petition, with the commission for review and approval of those principal costs no later than 60 days before filing a petition for a financing order pursuant to this section. The commission may not authorize any such principal costs to be included or excluded, as applicable, as nuclear asset-recovery costs if such inclusion or exclusion, as applicable, of those costs would otherwise be precluded by such electric utility's settlement agreement.

(c)1. Proceedings on a petition submitted pursuant to paragraph (a) begin with the petition by an electric utility, filed subject to the timeframe specified in paragraph (b), if applicable, and shall be disposed of in accordance with chapter 120 and applicable rules, except that this section, to the extent applicable, controls.

a. Within 7 days after the filing of a petition, the commission shall publish a case schedule, which must place the matter before the commission on an agenda that permits a commission decision no later than 120 days after the date the petition is filed.

b. No later than 135 days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition. A party to the commission proceeding may petition the commission for reconsideration of the financing order within 5 days after the date of its issuance. The commission shall issue a financing order authorizing the

financing of reasonable and prudent nuclear asset-recovery costs and financing costs if the commission finds that the issuance of the nuclear asset-recovery bonds and the imposition of nuclear asset-recovery charges authorized by the financing order have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. Any determination of whether nuclear asset-recovery costs are reasonable and prudent shall be made with reference to the general public interest and in accordance with paragraph (b), if applicable.

2. In a financing order issued to an electric utility, the commission shall:

a. Except as provided in sub-subparagraph d. and subparagraph 4., specify the amount of nuclear asset-recovery costs to be financed using nuclear asset-recovery bonds, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs. The commission shall describe and estimate the amount of financing costs which may be recovered through nuclear asset-recovery charges and specify the period over which such costs may be recovered. Any such determination as to the overall time period for cost recovery must be consistent with a settlement agreement, if any, under paragraph (b);

b. Determine if the proposed structuring, expected pricing, and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. A financing order must provide detailed findings of fact addressing cost-effectiveness and associated rate impacts upon retail customers and retail customer classes;

c. Require, for the period specified pursuant to sub-subparagraph a., that the imposition and collection of nuclear asset-recovery charges authorized under a financing order be nonbypassable and paid by all existing and future customers receiving transmission or distribution service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state;

d. Include a formula-based true-up mechanism for making expeditious periodic adjustments in the nuclear asset-recovery charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or under-collection of the charges or to otherwise ensure the timely payment of nuclear asset-recovery bonds and financing costs and other required amounts and charges payable in connection with the nuclear asset-recovery bonds;

e. Specify the nuclear asset-recovery property that is, or shall be, created in favor of an electric utility or its successors or assignees and that shall be used to pay or secure nuclear asset-recovery bonds and all financing costs;

f. Specify the degree of flexibility to be afforded to the electric utility in establishing the terms and conditions of the nuclear asset-recovery bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs consistent with sub-subparagraphs a.-e.;

g. Require nuclear asset-recovery charges to be allocated to the customer classes using the criteria set out in s. 366.06(1), in the manner in which these costs or their equivalent was allocated in the cost-of-service study that was approved in connection with the electric utility's last rate case and that is in effect during the nuclear asset-recovery charge annual billing period. If the electric utility's last rate case was resolved by a settlement agreement, the cost-of-service methodology that was adopted in the settlement agreement in that case and that is in effect during the nuclear asset-recovery charge annual billing period shall be used;

h. Require, after the final terms of an issuance of nuclear asset-recovery bonds have been established and before the issuance of nuclear asset-recovery bonds, that the electric utility determine the resulting initial nuclear asset-recovery charge in accordance with the financing order and that such initial nuclear asset-recovery charge be final and effective upon the issuance of such nuclear asset-recovery bonds without further commission action so long as the nuclear asset-recovery charge is consistent with the financing order; and

i. Include any other conditions that the commission considers appropriate and that are authorized by this section.

In performing the responsibilities of this subparagraph and subparagraph 5., the commission may engage outside consultants and counsel. All expenses associated with such services shall be included as part of financing costs and included in the nuclear asset-recovery charge.

3. A financing order issued to an electric utility may provide that creation of the electric utility's nuclear asset-recovery property pursuant to subparagraph 2.e. is conditioned upon, and simultaneous with, the sale or other transfer of the nuclear asset-recovery property to an assignee and the pledge of the nuclear asset-recovery property to secure nuclear asset-recovery bonds.

4. If the commission issues a financing order and nuclear asset-recovery bonds are issued, the electric utility or assignee must file with the commission at least biannually a petition or a letter applying the formula-based true-up mechanism pursuant to sub-subparagraph 2.d. and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the adjustments described in sub-subparagraph 2.d. The review of such a request is limited to determining

whether there is any mathematical error in the application of the formula-based mechanism relating to the amount of any overcollection or undercollection of nuclear asset-recovery charges and the amount of any adjustment. Such adjustments shall ensure the recovery of revenues sufficient to provide for the timely payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges relating to nuclear asset-recovery bonds approved under the financing order. Within 60 days after receiving an electric utility's request pursuant to this paragraph, the commission must approve the request or inform the electric utility of any mathematical errors in its calculation. If the commission informs the utility of mathematical errors in its calculation, the utility may correct the error and refile the request. The timeframes previously described in this paragraph apply to a refiled request.

5. Within 120 days after the issuance of nuclear asset-recovery bonds, the electric utility shall file with the commission information on the actual costs of the nuclear asset-recovery bonds issuance. The commission shall review, on a reasonably comparable basis, such information to determine if such costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The commission may disallow all incremental issuance costs in excess of the lowest overall costs by requiring the electric utility to make a credit to the capacity cost recovery clause in an amount equal to the excess of actual issuance costs incurred, and paid for out of nuclear asset-recovery bonds proceeds, and the lowest overall issuance costs as determined by the commission. The commission may not make adjustments to the nuclear asset-recovery charges for any such excess issuance costs.

6. Subsequent to the transfer of nuclear asset-recovery property to an assignee or the issuance of nuclear asset-recovery bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except as provided in subparagraph 4. and paragraph (d), the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust nuclear asset-recovery charges approved in the financing order. After the issuance of a financing order, the electric utility retains sole discretion regarding whether to assign, sell, or otherwise transfer nuclear asset-recovery property or to cause nuclear asset-recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance. If the electric utility decides not to cause nuclear asset-recovery bonds to be issued, the electric utility may not recover financing costs, as defined in paragraph (1)(e), from customers.

(d) At the request of an electric utility, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding nuclear asset-recovery bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in paragraph (c). Effective upon retirement of the refunded nuclear asset-recovery bonds

and the issuance of new nuclear asset-recovery bonds, the commission shall adjust the related nuclear asset-recovery charges accordingly.

(e) Within 30 days after the commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Florida Supreme Court. The petition for review must be served upon the executive director of the commission personally or by service at the office of the commission. Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and state and federal law and is within the authority of the commission under this section. Inasmuch as delay in the determination of the appeal of a financing order will delay the issuance of nuclear asset-recovery bonds, thereby diminishing savings to customers which might be achieved if such nuclear asset-recovery bonds were issued as contemplated by a financing order, the Florida Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

(f)1. A financing order remains in effect and all such nuclear asset-recovery property continues to exist until nuclear asset-recovery bonds issued pursuant to the financing order have been paid in full and all commission-approved financing costs of such nuclear asset-recovery bonds have been recovered in full.

2. A financing order issued to an electric utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the electric utility or its successors or assignees.

(3) EXCEPTIONS TO COMMISSION JURISDICTION.—

(a) If the commission issues a financing order to an electric utility pursuant to this section, the commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this chapter, consider the nuclear asset-recovery bonds issued pursuant to the financing order to be the debt of the electric utility other than for federal income tax purposes, consider the nuclear asset-recovery charges paid under the financing order to be the revenue of the electric utility for any purpose, or consider the nuclear asset-recovery costs or financing costs specified in the financing order to be the costs of the electric utility, nor may the commission determine any action taken by an electric utility which is consistent with the financing order to be unjust or unreasonable.

(b) The commission may not order or otherwise directly or indirectly require an electric utility to use nuclear asset-recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure, unless that expenditure is a nuclear asset-recovery

cost and the electric utility has filed a petition pursuant to paragraph (2)(a) to finance such expenditure using nuclear asset-recovery bonds. The commission may not refuse to allow an electric utility to recover nuclear asset-recovery costs in an otherwise permissible fashion, or refuse or condition authorization or approval pursuant to s. 366.04 of the issuance and sale by an electric utility of securities or the assumption by the utility of liabilities or obligations, solely because of the potential availability of nuclear asset-recovery cost financing.

(4) ELECTRIC UTILITY DUTIES.—The electric bills of an electric utility that has obtained a financing order and caused nuclear asset-recovery bonds to be issued must:

(a) Explicitly reflect that a portion of the charges on such bill represents nuclear asset-recovery charges approved in a financing order issued to the electric utility and, if the nuclear asset-recovery property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to nuclear asset-recovery charges and that the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the nuclear asset-recovery charge and the ownership of that charge.

(b) Include the nuclear asset-recovery charge on each customer's bill as a separate line item titled "Asset Securitization Charge" and include both the rate and the amount of the charge on each bill.

The failure of an electric utility to comply with this subsection does not invalidate, impair, or affect any financing order, nuclear asset-recovery property, nuclear asset-recovery charge, or nuclear asset-recovery bonds, but does subject the electric utility to penalties under s. 366.095.

(5) NUCLEAR ASSET-RECOVERY PROPERTY.—

(a)1. All nuclear asset-recovery property that is specified in a financing order constitutes an existing, present property right or interest therein, notwithstanding that the imposition and collection of nuclear asset-recovery charges depends on the electric utility, to which the financing order is issued, performing its servicing functions relating to the collection of nuclear asset-recovery charges and on future electricity consumption. Such property exists regardless of whether the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the electric utility or its successors or assignees.

2. Nuclear asset-recovery property specified in a financing order exists until nuclear asset-recovery bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such nuclear asset-recovery bonds have been recovered in full.

3. All or any portion of nuclear asset-recovery property specified in a financing order issued to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee, that is wholly owned, directly or indirectly, by the electric utility, created for the limited purpose of acquiring, owning, or administering nuclear asset-recovery property or issuing nuclear asset-recovery bonds under the financing order. All or any portion of nuclear asset-recovery property may be pledged to secure nuclear asset-recovery bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Each such transfer, sale, conveyance, assignment, or pledge by an electric utility or affiliate of an electric utility is considered to be a transaction in the ordinary course of business.

4. If an electric utility defaults on any required payment of charges arising from nuclear asset-recovery property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the nuclear asset-recovery property to the financing parties. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

5. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in nuclear asset-recovery property specified in a financing order issued to an electric utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any other entity.

6. Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the nuclear asset-recovery property.

(b)1. Except as provided in this section, the Uniform Commercial Code does not apply to nuclear asset-recovery property or any right, title, or interest of an electric utility or assignee described in subparagraph (1)(1)1., whether before or after the issuance of the financing order. In addition, such right, title, or interest pertaining to a financing order, including, but not limited to, the associated nuclear asset-recovery property and any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from nuclear asset-recovery charges pursuant to such order, is not deemed proceeds of any right or interest other than in the financing order and the nuclear asset-recovery property arising from the order.

2. The creation, attachment, granting, perfection, priority, and enforcement of liens and security interests in nuclear asset-recovery property to secure nuclear asset-recovery bonds is governed solely by this section and, except to the extent provided in this section, not by the Uniform Commercial Code.

3. A valid, enforceable, and attached lien and security interest in nuclear asset-recovery property may be created only upon the later of:

- a. The issuance of a financing order;
- b. The execution and delivery of a security agreement with a financing party in connection with the issuance of nuclear asset-recovery bonds; or
- c. The receipt of value for nuclear asset-recovery bonds.

A valid, enforceable, and attached security interest is perfected against third parties as of the date of filing of a financing statement in the Florida Secured Transaction Registry, as defined in s. 679.527, in accordance with subparagraph 4., and is thereafter a continuously perfected lien; and such security interest in the nuclear asset-recovery property and all proceeds of such nuclear asset-recovery property, regardless of whether billed, accrued, or collected, and regardless of whether deposited into a deposit account and however evidenced, has priority in accordance with subparagraph 8. and takes precedence over any subsequent judicial or other lien creditor. A continuation statement does not need to be filed to maintain such perfection.

4. Financing statements required to be filed pursuant to this section must be filed, maintained, and indexed in the same manner and in the same system of records maintained for the filing of financing statements in the Florida Secured Transaction Registry, as defined in s. 679.527. The filing of such a financing statement is the only method of perfecting a lien or security interest on nuclear asset-recovery property.

5. The priority of a lien and security interest perfected under this paragraph is not impaired by any later modification of the financing order or nuclear asset-recovery property or by the commingling of funds arising from nuclear asset-recovery property with other funds, and any other security interest that may apply to those funds is terminated as to all funds transferred to a segregated account for the benefit of an assignee or a financing party or to an assignee or financing party directly.

6. If a default or termination occurs under the terms of the nuclear asset-recovery bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any nuclear asset-recovery property as if they were a secured party under Article 9 of the Uniform Commercial Code; and a court may order that amounts arising from nuclear asset-recovery property be transferred to a separate account for the financing parties' benefit, to which their lien and security interest applies. Upon application by or on behalf of the financing parties to a circuit court of

this state, the court shall order the sequestration and payment to the financing parties of revenues arising from the nuclear asset-recovery property.

7. The interest of a pledgee of an interest or any rights in any nuclear asset-recovery property is not perfected until filing as provided in subparagraph 4.

8. The priority of the conflicting interests of pledgees in the same interest or rights in any nuclear asset-recovery property is determined as follows:

a. Conflicting perfected interests or rights of pledgees rank according to priority in time of perfection. Priority dates from the time a filing covering the interest or right is made in accordance with this paragraph.

b. A perfected interest or right of a pledgee has priority over a conflicting unperfected interest or right of a pledgee.

c. A perfected interest or right of a pledgee has priority over a person who becomes a lien creditor after the perfection of such pledgee's interest or right.

(c) The sale, assignment, or transfer of nuclear asset-recovery property is governed by this paragraph. All of the following apply to a sale, assignment, or transfer under this paragraph:

1. The sale, conveyance, assignment, or other transfer of nuclear asset-recovery property by an electric utility to an assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the transferor's right, title, and interest in, to, and under the nuclear asset-recovery property, other than for federal and state income and franchise tax purposes. After such a transaction, the nuclear asset-recovery property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the nuclear asset-recovery property perfected under paragraph (b).

2. The characterization of the sale, conveyance, assignment, or other transfer as a true sale or other absolute transfer under subparagraph 1. and the corresponding characterization of the transferee's property interest are not affected by:

a. Commingling of amounts arising with respect to the nuclear asset-recovery property with other amounts;

b. The retention by the transferor of a partial or residual interest, including an equity interest, in the nuclear asset-recovery property, whether direct or indirect, or whether subordinate or otherwise;

c. Any recourse that the transferee may have against the transferor other than any such recourse created, contingent upon, or otherwise occurring or

resulting from one or more of the transferor's customers' inability or failure to timely pay all or a portion of the nuclear asset-recovery charge;

d. Any indemnifications, obligations, or repurchase rights made or provided by the transferor, other than indemnity or repurchase rights based solely upon a transferor's customers' inability or failure to timely pay all or a portion of the nuclear asset-recovery charge;

e. The responsibility of the transferor to collect nuclear asset-recovery charges;

f. The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; or

g. The granting or providing to holders of nuclear asset-recovery bonds a preferred right to the nuclear asset-recovery property or credit enhancement by the electric utility or its affiliates with respect to such nuclear asset-recovery bonds.

3. Any right that an electric utility has in the nuclear asset-recovery property before its pledge, sale, or transfer or any other right created under this section or created in the financing order and assignable under this section or assignable pursuant to a financing order is property in the form of a contract right. Transfer of an interest in nuclear asset-recovery property to an assignee is enforceable only upon the later of the issuance of a financing order, the execution and delivery of transfer documents to the assignee in connection with the issuance of nuclear asset-recovery bonds, and the receipt of value. An enforceable transfer of an interest in nuclear asset-recovery property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with subparagraph (b)4. The transfer is perfected against third parties as of the date of filing.

4. Financing statements required to be filed under this section must be maintained and indexed in the same manner and in the same system of records maintained for the filing of financing statements in the Florida Secured Transaction Registry, as defined in s. 679.527. The filing of such a financing statement is the only method of perfecting a transfer of nuclear asset-recovery property.

5. The priority of a transfer perfected under this section is not impaired by any later modification of the financing order or nuclear asset-recovery property or by the commingling of funds arising from nuclear asset-recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under paragraph (b), is terminated when they are transferred to a segregated account for the assignee or a financing party. If nuclear asset-recovery property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.

6. The priority of the conflicting interests of assignees in the same interest or rights in any nuclear asset-recovery property is determined as follows:

a. Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with subparagraph (b)4.

b. A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.

c. A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

(6) DESCRIPTION OR INDICATION OF PROPERTY.—The description of nuclear asset-recovery property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication describes the financing order that created the nuclear asset-recovery property and states that such agreement or financing statement covers all or part of such property described in such financing order. This subsection applies to all purported transfers of, and all purported grants or liens or security interests in, nuclear asset-recovery property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed, before or after the effective date of this section.

(7) FINANCING STATEMENTS.—All financing statements referenced in this section are subject to Part V of Art. 9 of the Uniform Commercial Code, except that the requirement as to continuation statements does not apply.

(8) CHOICE OF LAW.—The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any nuclear asset-recovery property shall be the laws of this state, and exclusively, the laws of this section.

(9) NUCLEAR ASSET-RECOVERY BONDS NOT PUBLIC DEBT.—The state or its political subdivisions are not liable on any nuclear asset-recovery bonds, and the bonds are not a debt or a general obligation of the state or any of its political subdivisions, agencies, or instrumentalities. An issue of nuclear asset-recovery bonds does not, directly, indirectly, or contingently obligate the state or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the nuclear asset-recovery bonds, other than in their capacity as consumers of electricity. This subsection does not preclude bond guarantees or enhancements pursuant to this section. All nuclear asset-recovery bonds must

contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of Florida is pledged to the payment of the principal of, or interest on, this bond."

(10) NUCLEAR ASSET-RECOVERY BONDS AS LEGAL INVESTMENTS WITH RESPECT TO INVESTORS THAT REQUIRE STATUTORY AUTHORITY REGARDING LEGAL INVESTMENT.—All of the following entities may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in nuclear asset-recovery bonds:

(a) The state, the investment board, municipal corporations, political subdivisions, public bodies, and public officers, except for members of the commission.

(b) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.

(c) Personal representatives, guardians, trustees, and other fiduciaries.

(d) All other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature.

(11) STATE PLEDGE.—

(a) For purposes of this subsection, the term "bondholder" means a person who holds a nuclear asset-recovery bond.

(b) The state pledges to and agrees with bondholders, the owners of the nuclear asset-recovery property, and other financing parties that the state will not:

1. Alter the provisions of this section which make the nuclear asset-recovery charges imposed by a financing order irrevocable, binding, and nonbypassable charges;

2. Take or permit any action that impairs or would impair the value of nuclear asset-recovery property or revises the nuclear asset-recovery costs for which recovery is authorized; or

3. Except as authorized under this section, reduce, alter, or impair nuclear asset-recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related nuclear asset-recovery bonds have been paid and performed in full.

This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the nuclear asset-recovery

charges collected pursuant to a financing order and of the holders of nuclear asset-recovery bonds and any assignee or financing party entering into a contract with the electric utility.

(c) Any person or entity that issues nuclear asset-recovery bonds may include the pledge specified in paragraph (b) in the nuclear asset-recovery bonds and related documentation.

(12) NOT AN ELECTRIC UTILITY.—An assignee or financing party is not an electric utility or person providing electric service by virtue of engaging in the transactions described in this section.

(13) CONFLICTS.—If there is a conflict between this section and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in nuclear asset-recovery property, this section shall govern.

(14) EFFECT OF INVALIDITY ON ACTIONS.—Effective on the date that nuclear asset-recovery bonds are first issued under this section, if any provision of this section is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this section which is taken by an electric utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action remains in full force and effect with respect to all nuclear asset-recovery bonds issued or authorized in a financing order issued under this section before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.

(15) PENALTIES.—A violation of this section or of a financing order issued under this section subjects the utility that obtained the order to penalties under s. 366.095 and to any other penalties or remedies that the commission determines are necessary to achieve the intent of this section and the intent and terms of the financing order and to prevent any increase in financial impact to the utility's customers above that set forth in the financing order. If the commission orders a penalty or a remedy for a violation, the monetary penalty or remedy and the costs of defending against the proposed penalty or remedy may not be recovered from the customers. The commission may not make adjustments to nuclear asset-recovery charges for any such penalties or remedies.

Section 8. This act shall take effect July 1, 2015.

Approved by the Governor June 10, 2015.

Filed in Office Secretary of State June 10, 2015.